









# THE BIHAR AND ORISSA MUNICIPAL ACT

BEING  
BIHAR AND ORISSA ACT VII OF 1922, TOGETHER WITH  
NOTES, RULES AND  
OTHER CONNECTED LAWS.

BY  
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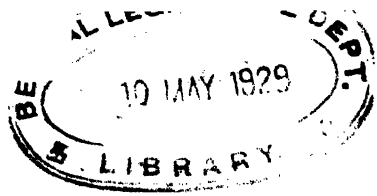


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## **PREFACE.**

The Bihar and Orissa Municipal Act was passed in 1922, and it came into operation in this province from the 1st of January, 1923. It consolidates and amends the law relating to municipalities in this province. It retains the provisions of the Bengal Act, except where experience has shown them to be unsuitable, or where the corresponding provisions of more recent enactments are manifestly superior and improves the arrangement of those provisions and adds others which appear to be necessary. The need of a compilation, designed to throw light on the origin and judicial interpretation of the various provisions of the Act has been felt since the passing of this Act. The writer has endeavoured to meet this want by bringing together in a convenient form materials not always readily available outside Government offices.

The Introduction contains extracts from well-known works bearing on the history of municipal law from the earliest times up-to-date. In the Notes the principles underlying each section have been set out and the provision from which it has been taken shown and all the important rulings of the Calcutta, Bombay, Madras, Allahabad and Patna High Courts have been cited. The various other Acts connected with the law relating to municipalities have been given and the case law up to the end of December, 1928, have been incorporated therein. Lastly, Government Rules and Notifications under the Act and the other connected Acts have been reproduced in the Appendices.

The writer has quoted freely from such standard authors as Pargiter and Collier. Much assistance has been derived from Mr. S. K. Sahay's Bihar & Orissa Municipal Act. To all these the writer's most grateful thanks are due.

The writer will feel amply rewarded for his labours if this modest compilation should prove to be of some use to those for whom it is intended.

Any suggestions for improvement will be thankfully received.

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## INTRODUCTION

The system of municipal local self-government in its present form is a creation of the British rule. It is a thoroughly European and democratic form of self-government and it originated with the idea of inducing the people to undertake the management of their own local affairs and of creating and developing the capacity for self-help in respect of these matters. This form of self-government has been generally accepted by the races and peoples of India and has been accorded a definite place in their social life. Local self-government as a sort of political education and administrative devolution dates outside Presidency towns from the financial reforms of Lord Mayo's Government. The presidency towns first came within the purview of legislative enactment which is contained in section 138 of the Charter Act of 1793 (33 George III Ch. 52). By that Act, Justices of the Peace were appointed with authority to make assessments on houses and provide for scavenging, watching and repairs of the streets. In the mofussil towns regulations were passed from time to time with a view to impose town duties only. These duties were of the nature of *Octroi* and were a source of revenue from before the British rule; and they continued to be collected during the early period of the East India Company's rule and were abolished in 1795. By Regulation X of 1801, they were reimposed in the towns of Murshidabad, Dacca and Benares, and later on similar impositions were made in the towns of Calcutta, Patna, Midnapore, Burdwan, Hooghly, Krishnanagar, Jessore, Nator, Dinajpur, Comilla, Islamabad (now Chittagong), Nasirabad (District Mymensingh), Rangpur, Purnea, Sylhet, Bhagalpur, Muzaffarpur, Chapra, Arrah and Gaya by Regulation X of 1810. Local taxation for the provision of Town *chowkidars* for watch and ward was imposed on the inhabitants of the cities of Dacca, Murshidabad and Patna by Reg. XIII of 1813, and this regulation was extended to all towns within the Divisions of Dacca, Murshidabad, Calcutta and Patna at which a District Magistrate was or might be stationed; this tax was assessed by five substantial holders subject to the Magistrate's control. The introduction of taxation for local improvements was first made by Act XV of 1837, which declared it lawful "to appropriate a portion of the tax so levied to the purpose of cleaning and repairing the towns in which the tax is levied," and this Act was the first one to recognise the necessity of sanitation in towns and to defray the cost, a certain rate on each shop-keeper or house-holder was imposed.

The creation of municipal bodies in Bengal was first undertaken by Act X of 1842. The Act enacted that if two-thirds of the house-holders of

any town, district, settlement or place of public resort or residence within the Presidency of Bengal desired to make better provision for repairing, cleaning, lighting, draining or watering of public streets, roads, drains or tanks or any like purposes, the Government would on their application form a committee of the inhabitants to carry out the works set out in the application. The Committee thus constituted had power to assess a tax on houses on the yearly value of the premises. Under the Act the whole power of initiation was left to the house-holders of the towns themselves, and no attempt was made to take advantage of it. The Act remained a dead letter.

A further effort in the introduction of sanitary measures in towns was attempted by Act XXVI of 1850, by it the power of initiation was reserved to Government it was enacted by this Act that if the Government found that the people of any town were desirous of making better provision for the up-keep and making of roads, the watching of public streets, drains and tanks, the prevention of nuisances, or general improvements, it might, after notification in the Provincial Gazette, make the necessary proclamation extending the Act to such local area. After the proclamation, the Local Government could appoint a Municipal Board consisting of the Magistrate and other members for the area; and the Board thus constituted could make rules for the imposition of taxes to be levied, and enter into contracts as a Corporation, and define nuisances and impose penalties for the same. Little use was made of the Act. Later on the Town Police Act of 1856 (Act XX of 1856) was enacted and it applied to all towns in the Presidency of Fort-William in which Magistrate and Joint-Magistrates had their head quarters, and to such other towns, suburbs, stations and bazars where an officer of police, of at least the grade of Jamadar, was stationed. Taxation on the lines of imposition of rates on the annual value of holdings was sought to be enforced, and the taxes were assessed and collected by a *panchayat* appointed by the Magistrate, and paid into the Magistrate's *Chowkidary* Fund. The pay of the *chowkidars* appointed for the purpose was the first charge on it and the balance could be spent on conservancy, town improvement and lighting of the streets. Up to 1850, the Acts and Regulations provided mainly for the maintenance of a police force and only when there were any surplus funds, could ordinary repairs to roads or conservancy or lighting arrangements be made.

In 1863 the report of the Royal Army Sanitary Committee drew attention to the unhealthy condition of the towns, and the need for extension of municipal measures was recognised. The first Act to extend Municipal Government to the large towns of the Province was Act III of 1864 (The District Municipal Improvement Act). Municipal bodies, consisting of the Commissioner of the Division, the Magistrate, and the Executive Engineer,

and not less than seven residents, could be formed under the Act, with power mainly to impose taxation on the annual value of holdings. They could also levy taxes on horses, carriages, elephants and carts and they had to take over the control and repair of public highways and buy land for making new roads and for other purposes. They could also deal with public conservancy and could enforce the taking of licences for carrying on offensive trades. The Act was amended by Acts VI and VII of 1867, and Act II of 1868, and by Act VI of 1867, Municipal bodies were empowered to use their funds for the purpose of vaccination, and to spend not more than Rs. 250 a month on hospitals situated within the municipality, but the Act was repealed by Act V of 1876.

The towns of the mofussil which were being governed by Act XX of 1856 were taken out from the operation of the Act and they were brought within the purview of Act VI of 1868 (District Towns Act). By this Act a Town Fund was constituted to provide for the cost of the Town Police in the first place, and after that for the repair and construction of roads, the conservancy of the town and for meeting the cost of vaccination and hospitals. A Town Committee was constituted comprising not less than five persons owning property or carrying on business in the town, and some government officers, and it could appoint its own Chairman and Vice-Chairman annually. The main source of income was a tax on persons according to their circumstances and property to be protected, subject to a maximum of Rs. 7 per month for any one holding; the Committee had to assess the tax, but the collection was in the hands of a tax collector appointed by the Magistrate. The Magistrate carried out the executive work, and when he was the Chairman, the Committee became a Corporation with a common seal and could act by itself.

The result of legislation since 1850, was that municipal government in Bengal towns, exclusive of Calcutta, was conducted under four different laws, each with its own system and procedure; the four Acts were (1) Act XXVI of 1850, which empowered Government to constitute a Corporation in any town when the inhabitants expressed a wish for self-government, (2) Act XX of 1856 under which the whole municipal government vested in the Magistrate, (3) Act III of 1864 called the " District Municipal Improvement Act " under which something approaching self-government was allowed to townships in Bengal; it provided for the appointment of a governing body consisting of not less than seven residents of the town with some *ex-officio* members (*viz.* the Commissioners of the Division, the Magistrate and the Executive Engineer), and (4) Act VI of 1868 (the District Towns Act) according to which a Town Committee was constituted.



In 1872 the Bengal Government attempted to consolidate the four Acts and for this purpose a bill was passed by the Bengal Council which was ultimately vetoed by the Governor-General in Council; although the attempt failed another Act, *viz.*, Act II of 1873, was passed, and it provided that two-thirds of the Municipal Commissioners of a town established under the District Municipal Improvement Act (Act III of 1864), might be elected by the rate-payers; rules for election in such towns could be made by the Local Government.

With the establishment of municipalities by the Municipal Improvement Act of 1864 (Act III of 1864) other Acts which affected municipal areas were passed, thus the Bengal Municipal (Slaughter-Houses and Meat Markets) Act, VII of 1865, which empowered municipalities to control places used as slaughter-houses or for sale of meat; the Hackney Carriage Act of 1866, and the Prevention of Cruelty Act of 1869, and the Births and Deaths Registration Act of (Act IV of 1873) and the Public Works Loans Act, were passed by the India Council; similarly Act VII of 1790 special provisions for improving the Sanitary conditions of the Town of Dacca, Act V of 1873 for the Howrah Municipality, and the Puri Lodging-Houses Act, were passed to meet special needs of special local areas.

The four Acts mentioned in the previous paragraphs, governing the different towns, were repealed by a consolidating Act (Act IV of 1876), and the local bodies constituted under the four Acts were divided into four classes; those governed by Act III of 1864, became first class, those governed by Act VI of 1868, second class, those which were still under Act XX of 1856, became unions, and those under Act XXVI of 1850, stations. By this Act the whole body of Municipal Commissioners was still appointed by Government, but the whole or any number of the Commissioners might be elected by the rate-payers provided that at least one-third of the rate-payers signed a petition praying for an elective system.

\* The Bengal Municipal Act (Act III of 1884) was passed during the viceroyalty of the Marquis of Ripon, extending the principle of local self-government. Unions and Stations ceased to have any semblance of municipal bodies, separate provisions being made for them by the Local Self-Government Act (Act III of 1885). The Executive powers of the municipal bodies were not altered, but the great changes were that two-thirds of the Commissioners were elected by the rate-payers, and the Chairman and Vice-Chairman were elected by the Commissioners, and municipalities were no longer liable for police duties. The Act was not left untouched; it was amended by the Bengal Acts, Act III of 1886, Act I of 1888, Act II of 1888, Act I of 1894, Act IV of 1894, Act VI of 1894, Act II of 1896, and

Act II of 1914, and by the India Council Acts, Act V of 1897, and Act I of 1903. Previous to the Bengal Partition of 1905, Act III of 1884, was in force in Old Bengal. It remained in force after the partition in the provinces of Western Bengal, Eastern Bengal and Assam. When the territorial re-adjustments were made on the 1st April, 1912, the Municipal Act remained unaffected by reason of the Bengal, Bihar and Orissa and Assam Laws' Act of 1912 (Act VII of 1912, I. C.), and it continued to be the statutory law governing municipalities in the province of Bihar and Orissa.

It was recognised as long ago as 1905, that the Bengal Municipal Act of 1884, required amendment. Amendments were drafted, but in accordance with the views of the Government of India, the Government of Bengal decided that it would be preferable to have a new Act instead of amending the existing Act, and it was reserved to the Bihar and Orissa Council to draft the Bill, and this Act was passed in 1922. (For a full history of this Act see pages 1 to 3 and for the Statement of Objects and Reasons see pages 3 to 5.

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**Statement showing the manner in which the sections of the Bengal  
Municipal Act, 1894, are incorporated in the Bihar and Orissa  
Municipal Act, 1922.**

Section of the Bengal Municipal Act, 1894.	Corresponding Section of the Act.	Section of the Bengal Municipal Act, 1894.	Corresponding Section in the Act.	Section of the Bengal Municipal Act, 1894.	Corresponding Section in the Act.
1	1.	37E	Not reproduced.	78	75 (1), 81 (3)
2	2.	37F	293.	79	79.
3	Not reproduced.	37G	294.	80	76.
4	Cf. Section 58.	37H	299.	81	81 (5).
5	1 (4).	37I	297.	82	81 (3) (5).
6	3, 342 (1).	37J	296.	83	86.
7	Not reproduced.	37K	296.	84	75 (2), 81 (7).
8	4, 5, 6 & 13 (1).	37L	Not reproduced.	85	82, 82 (1) (a), (2), 92 (1).
9	4 & 13 (1).	37M		86	82.
9A	5, 6 & 13 (1).	38	43, 57 (2).	87	83, 89.
9B	86.	39	44.	88	90.
10	4 (1).	40	45.	89	83, 91.
11	Repealed Ben- gal Act IV of 1894.	41	46.	90	92 (2).
12		42	47.	91	93.
13		43	48.	92	94.
14	13.	44	24.	93	95.
15	13, 29 (1) (a).	45	25.	94	96.
16	15, 17, 19.	46	37 (1).	95	97.
17	14.	47	38.	96	101.
18	Cf. 6 (a), 7 & 14.	48	39.	97	106.
19	Repealed, Ben- gal Act IV of 1894.	49	42 (2).	97A	107 (1) (e), (4)
20	35 (1).	50	Not reproduced. Cf. See 40 & 50.	98	84 (1) (b), (c)
21	35 (2).	51		99	107.
22	29 (1) (a) & (b).	52	49 (1).	100	108.
23	36.	53	49 (1).	101	98, 99.
24	20, 21, 34.	54	Not reproduced.	102	104.
25	22, 27 (1) (c), 27 (3), 32.	55	49 (4).	103	100, 105.
26	22, 29 (1) (c), 29 (3), 34.	56	53.	104	109.
26A	31.	57	55.	105	183.
26B	29 (2).	58	56.	106	110.
27	33.	59	20 (4), 30 (2), 34 (2), 38.	107	107 (1) (f).
27A	27.	60	48 (2).	108	107.
28	30.	61	37 (2). Proviso (ii).	109	107 (1) (b).
29	33.	62	382.	110	111.
29A	Not reproduced; Cf. See 61.	63	383.	111	112.
30	12.	64	384.	111A	113, 114.
31	381.	65	385.	112	115.
32	58, 59.	66	386.	113	116.
33	59.	66A	387.	114	117.
34	60.	67	65.	115	118.
35	60 (2).	68	67.	116	119.
36	63.	69	68, 81 (1).	117	120.
37	63.	69A	69 (2).	118	121.
37A	Not reproduced.	69B	81 (1), (8).	119	122.
37B	51, 325.	70	70.	120	123.
37C	292, 325.	71	81 (2).	121	124, 163 (c).
37D	325.	72	71, 81 (3).	122	125.
37E	85 (1) (a), 325.	73	73.	123	126.
		74	73 (1).	124	127.
		75	73 (2).	125	132.
		76	Not reproduced.	126	129.
		77	74.	127	128.
				128	380 (2).

Section of the Bengal Municipal Act, 1864.	Corresponding Section of the Act.	Section of the Bengal Municipal Act, 1864.	Corresponding Section in the Act.	Section of the Bengal Municipal Act, 1864.	Section of the Section of the Act.
129 ... 130.		203 ... 196 (2), 199.		251C ... 286, 288.	
130 ... 131.		204 ... 197, 198, 199, 200.		251D ... Not reproduced.	
131 ... 137.		205 ... 201.		252 ... 282, 283, 284.	
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137 ... 144.		210A ... 237.		256A ... 252 (2).	
138 ... 145.		211 ... 371.		256B ... 253.	
139 ... 146.		212 ... 370.		257 ... 251.	
140 ... 147.		213 ... 349.		253 ... 254.	
141 ... 148.		214 ... 350.		259 ... 250.	
141A ... 149.		215 ... 184.		260 ... 255.	
141B ... 150.		216 ... 184 (2), 200 (2).		260A ... 256.	
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298 ...	321.	325 ...	86 (2).	349C ...	} Not repro- duced. Cf. See 36, 11.
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300 ...	320, 323.	327 ...	} Repealed Ben- gal Act IV of 1894.	349E ...	
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## LIST OF ABBREVIATIONS.

App. Cas.	...	Appeal Cases.
Beng.	...	Bengal.
B. G. M.	...	Bengal Government Municipal Circular.
Cal. Gaz.	...	Calcutta Gazette.
C. L. J.	...	Calcutta Law Journal.
C. L. R.	...	Calcutta Law Reports.
Crl. Rev.	...	Criminal Revision.
C. W. N.	...	Calcutta Weekly Notes.
East	...	East's Reports, King's Bench.
E. & B.	...	Ellis and Blackburn's Reports, Queen's Bench
F. B.	...	Full Bench.
Govt. Cir.	...	Government Circulars.
Govt. Lett.	...	Government Letters.
Cal.	...	Indian Law Reports, Calcutta Series.
All.	...	" " " Allahabad Series.
Bom.	...	" " " Bombay Series.
Mad.	...	" " " Madras Series.
Pat.	...	" " " Patna Series.
Lah.	...	" " " Lahore Series.
Leg. Rem.	...	Legal Remembrancer.
L. J. Ch.	...	Law Journal, Chancery.
L. R. H. L.	...	Law Reports, House of Lords.
L. R. Q. B.	...	Law Reports, Queen's Bench.
Macq. H. L. Cases	...	Macqueen's Scotch Appeal Cases.
My. & Cr.	...	Mylne and Craig's Reports, Chancery.
O. C.	...	Oudh Cases.
P. R.	...	Punjab Record.
P. L. R.	...	Punjab Law Reporter.
Pt.	...	Part.
Q. B.	...	Queen's Bench Reports.
Reg.	...	Regulations.
W. R.	...	Weekly Reporter.

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# THE BIHAR AND ORISSA MUNICIPAL ACT.

[Bihar and Orissa Act VII of 1922].

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# THE BIHAR & ORISSA MUNICIPAL ACT, 1922.

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BIHAR AND ORISSA ACT VII OF 1922.

*(The assent of the Governor-General to this Act was published in the Bihar and Orissa Gazette of the 22nd November 1922.)*

## **AN ACT TO CONSOLIDATE AND AMEND THE LAW RELATING TO MUNICIPALITIES IN THE PROVINCE OF BIHAR AND ORISSA.**

**WHEREAS** it is expedient to consolidate and amend the law relating to Municipalities in the Province of Bihar and Orissa;

**AND WHEREAS** the previous sanction of the Governor-General under sub-section (3) of section 80A of the Government of India Act has been obtained to the passing of this Act;

**It is hereby enacted as follows:—**

### NOTES.

#### **The History of Bihar and Orissa Municipal Bill:—**

“(1) It was recognised as long ago as 1905 that the Bengal Municipal Act of 1884 required amendments. Amendments were drafted but in accordance with the views of the Government of India, the Government of Bengal decided that it would be preferable to have a new Act instead of amending the existing Act. Little was however done till after the separation of Bihar and Orissa from Bengal, but after the constitution of this province steps were taken to collect materials available for the amendments of the Act.

(2) Numerous suggestions have been made with regard to the amendments of the Act. The proceedings of a conference held in 1913 to enquire into the corrupt practices at municipal elections, the report of a further conference held in pursuance of a resolution passed at a meeting of the Legislative Council in November 1915, the report of a committee appointed to consider the question of the improvement of the milk supply in the larger towns, an interesting note written by Mr. Forest on the sanitary adminis-

tration in municipalities, the report of the Pilgrim Committee, the amendments made in the United Provinces Municipal Act all furnished materials for the amendment of the Bengal Act. Commissioners were accordingly asked in October 1915, to consider the suggestions which had been put forward and to make further suggestions, after consulting the municipalities of the Province, the leading associations and also private individuals interested in the subject. The criticisms and suggestions received were examined by Mr. Rainy and after orders had been passed by Government, the Legal Remembrancer Mr. Adami, now the Hon'ble Mr. Justice Adami was directed to redraft the bill. This bill was again circulated in 1917 and was exhaustively criticised by both official and non-official associations and individuals and was subsequently redrafted by the Hon'ble Mr. Hammond in the light of the opinions received.

(3) During the period that the bill was undergoing further revision, the Government of India issued their important resolution on Local Self-Government dated the 16th August, 1918, and the instructions contained in this resolution necessitated further changes in the bill. It was, however, ultimately decided to postpone the introduction of the bill for the following reasons :—

- (a) In a meeting of the Imperial Council held in 1918, Mr. Patel moved a resolution recommending the postponement of legislation in Provincial Councils with reference to matters arising out of the Government of India's resolution on Local Self-Government. The resolution was opposed by the Government of India and withdrawn, but in view of the assurance given by Sir Sankaran Nair, member in charge of the Education Department, that if any proposals or any measures which Local Governments submit to for the sanction of the Government of India were repugnant to the spirit of the reformed proposals contained in the resolution the Government of India would not accord sanction to them.
- (b) The Secretary of State desired that all matters relating to Local Self-Government should be dealt with by Local Government Board similar to the Board of that name existing in England. A committee was appointed to report on the working of the system of Local Government in England and Mr. Sifton was appointed as a member of that committee. It was decided that the recommendations of that committee and the report of Mr. Sifton should be awaited before finally revising the bill. It was further thought that the introduction of the reform scheme and the appointment of a minister to administer Local Self-Government would necessitate further changes in the bill."

“(4) In August, 1919, the opinion of the non-official members of the Legislative Council was taken as to whether the Local Self-Government and municipal bills should be proceeded with or not, and the members who were present at the informal meeting held for the purpose were unanimously of opinion that the bill should not be proceeded with but should be dealt with by the minister and the reformed council. In August 1920, a further committee was appointed to advise on certain questions arising out of the report of the Committee appointed to examine the system of Local Government in England and to make recommendations.” Memorandum by Government in the Ministry of Local Self-Government in the Bihar and Orissa Municipal Bill published in the gazette of the 13th July, 1921, Part V.

The Bill is the result of mature deliberations of officials and non-officials extending over several years. In deference to the public opinion the late Government decided to leave the work to the present Council. The Municipal Bill was published in the Bihar and Orissa Gazette dated the 18th November, 1921, and circulated for public opinion and after receipt of public opinion it was referred to a Select Committee; the Select Committee's report was then presented to the Council and the Act was passed in 1922.

### **The Object of the Act:—**

“The Bengal Municipal Act 1884 which at present governs municipal institutions in Bihar and Orissa though it has been amended three times is still in many respects defective and out of date, and does not fully meet the present requirements of Municipal Self-Government. The object of this bill is to remedy these defects taking advantage of the provisions of more modern enactments in force elsewhere in India and of the review of municipal policy by the Decentralisation Commission and by the Government of India. It is proposed to retain the provisions of the Bengal Act—with the working of which the public and the government officers are familiar—except where experience has shown them to be unsuitable, or where the corresponding provisions of more recent enactments are manifestly superior, but to improve the arrangements of these provisions, and add others which appear to be necessary.

“With regard to arrangement, the Bengal Act draws a sharp line between the regulations and powers which are in force in all municipalities and those which come into force only if specially extended by Local Government; the result is that provisions dealing with the same subject are found scattered in the various parts of the Act, causing inconvenience in reference. In the bill the opposite course is followed. With the exception of a few clauses all its provisions apply *proprio vigore* to every municipality, but power is given to the Local Government to except a municipality from the



operation of any provision which appears unsuited to it, either at the time of its creation or if the Commissioners at a meeting make a recommendation in this behalf and to make suitable rules to regulate the matter in respect of which exception has been made. This arrangement enables all the provisions dealing with any given subject to be grouped together. Endeavour has been made further to facilitate reference by placing penalty clauses immediately next to the clause to which they relate, and rule and by-law making clauses at the end of the chapter dealing with each subject.

"The recommendations of the Decentralisation Commission with regard to the delegation of certain powers, at present exercised by the Local Government to the Commissioner of the Division, specially the power to appoint, remove or accept the resignation of commissioners and their Chairman have been adopted in the bill. In view of the wide extent of the functions entrusted to the commissioners and to facilitate the speedy transaction of their work provision is made for the appointment by them of committees to deal with the various branches of Municipal Administration, while a new departure is made in allowing the commissioners to appoint persons of either sex who are not commissioners but who have special qualifications to be members of any committee in order that the commissioners may have the benefit of their advice.

"By extending the purposes to which the Municipal Fund may be applied, the bill affords greater opportunity to the commissioners to promote the safety, comfort and convenience of the public and to improve the amenities of the Municipality.

"In the matter of Municipal Taxation the object of the bill is to simplify and facilitate as far as possible assessment and collection. The four principal taxes are assessed on the value of holdings and there is no reason why one set of provisions should not cover the assessment and recovery of all of them; nor is there good reason why the owners of holdings should not be made liable to contribute to the cost of the supply of light and water to the roads of the municipality the occupiers paying for water, gas or electric current led into their holding through connections from the mains. By making the owners liable to pay these taxes it will be possible to levy a consolidated tax thus lightening the cost and work of collection. The Bengal Act limits the expenditure of the proceeds of the latrine fees to the payment of the cost of cleansing private privies or cess-pools and no part of these proceeds can be spent on the general improvement of the conservancy of the town. It is quite as important to the occupier that the surroundings of his holding should be kept in a sanitary state and that sewage or offensive matter allowed by him to flow into the drains should be removed, as that the contents of his privy or cess-pool, should be taken away; and if he allows offensive matter

**PREAMBLE.**

from his cess-pool, sink or drain to be discharged on the public road or drain, he should contribute to the cost of clearing it away. The Bill substitutes a conservancy tax for a latrine fee, and requires the Commissioners in all cases to provide for the cleaning of public latrines, urinals and drains, public roads and other property vested in the Commissioners, and, where a conservancy tax is imposed, from private latrines, urinals and cess-pools. The present maximum for the latrine fee has not been exceeded in the case of the conservancy tax. The Bill affords means of ensuring the proper re-assessment of taxes where an assessment has proved insufficient or inequitable and constitutes a more satisfactory form of Committee for the hearing of applications for review.

“The powers of the Commissioners for sanitary and other purposes affecting the health, safety and convenience of the inhabitants have, in many respects been extended and modernised and the very inadequate powers of making by-laws which are conferred by the Bengal Act have been largely amplified. Detailed regulations of town planning would best find a place in a separate enactment, but the changes made by the Bill in the Regulations regarding the constructions of roads and buildings will go far to enable the Commissioners to control the planning of the municipality. The provisions regarding the sale of food and drugs have been elaborated, and, in particular, the Commissioners are placed in a position to control effectively dairies and the sale of milk and milk-products and the occupation of insanitary buildings and to deal with infectious diseases and disorderly houses. The provisions relating to the introduction and maintenance of systems of water-supply, lighting, drainage and sewerage have been elaborated to meet modern requirements. Provisions regarding the regulation of slaughtering houses and of vehicles plying for hire, *i.e.*, hackney-carriages are included in the Bill and thus the statute-book will be lightened by the repeal of the Bengal Municipal (Slaughter-House and Meat-Markets) Act, 1865, and the Calcutta Hackney-Carriage Act, 1891.

“To further the interests of education, the Bill provides for the constitution of an Education Committee and for the grants of aid by Government for educational purposes, and give that Local Government power to make rules.” Statement of Objects and Reasons B. & O. Gazette Extraordinary dated 18th November, 1921.

**The Act consolidates and amends the law relating to Municipalities thus:—**

It retains the provisions of the Bengal Act, except where experience has shown them to be unsuitable, or where the corresponding provisions of more recent enactment are manifestly superior, and improves the arrange-

ment of those provisions and adds others which appear to be necessary. The new provisions have been taken from the United Provinces Municipal Act II of 1916, Calcutta Municipal Act (B. C. Act III of 1899), The Punjab Municipal Act (Punjab Act III of 1911), the Public Health Act 60 and 61 Vict C 38 and others and some sections are absolutely new. (The provisions taken from other Acts are shewn in the notes to the sections concerned).

## CHAPTER I.

### PRELIMINARY.

Short title, extent and commencement.

**I. (1) This Act may be called the Bihar and Orissa Municipal Act, 1922.**

**(2) It extends to the whole of the Province of Bihar and Orissa including the Santal Parganas.**

**(3) It shall come into force on such date as the Local Government may be notified direct.**

**(4) Notwithstanding anything contained in sub-section (2) it shall not take effect in any cantonment or part of a cantonment without the consent of the Governor-General in Council previously obtained.**

### NOTES.

#### Province of Bihar and Orissa.

"The constitution of the Province of Bihar and Orissa was determined by a Proclamation dated the 22nd March 1912 and the province came into being on the 1st April 1912.

The following territories constituted the Province of Bihar and Orissa :—

The districts of Bhagalpur, Monghyr, Purnea and the Santal Parganas in the Bhagalpur Division.

The Patna Division comprising the districts of Gaya, Patna and Sahabad.

The Tirhut Division comprising the districts of Champaran, Darbhanga, Muzaffarpur and Saran.

The Chota Nagpur Division comprising the districts of Hazaribagh, Manbhum, Palamau, Ranchi and Singhbhum.

The Orissa Division comprising the districts of Angul, Balasore, Cuttack, Puri and Sambalpur" Bihar and Orissa Administration Report p. 42 (1911-12).

Out of these tracts the following are known as the "Scheduled Districts by virtue of Act IV of 1874 :—

1. The Santal Pargannas.

2. The Chota-Nagpur Division.

3. The Mahal of Angul, i.e., the present Sadar Sub-division of Angul.

#### 4. The Khond mals."

[B. & O. Administration Report (1911-12) p. 36].

The Scheduled districts were removed from the operation of the general laws and regulations, by secs. 3 & 5 of Act XIV of 1874, the Local Government with the previous sanction of the Governor-General in Council has to declare what enactments are to be in force in those parts.

" By Act XX of 1854 (Govt. of India) Chota-Nagpur was transferred to the control of the Lieutenant-Governor of Bengal and the designation of the officer in charge was changed from Agent to Commissioner and that of his province from South Western Frontier Agency to Chota-Nagpur. The Deputy or as he is now styled, the Judicial Commissioner was appointed in 1848" B. & O. Administration Report (1911-12) p. 37. Almost all the Bengal Acts had been declared to be in force in the Chota-Nagpur Division. By various notifications published under sec. 3 and sec. 5 of Act XIV of 1874, several municipalities were constituted in the division and the Bengal Municipal Act was declared to be in force there.

The Bengal Municipal Act did not of itself apply to the Santhal Pargannas; but by virtue of Sec. 3 of Reg. III of 1872, as amended by Sec. 2 of Reg. III of 1886 the Bengal Municipal Act was extended to the Santhal Pargannas.

The Bihar and Orissa Municipal Act repeals the whole of the Bengal Municipal Act and Sec. 3 of Reg. III of 1872 as amended by sec. 2 of Reg. III of 1886 will not apply to the Bihar and Orissa Municipal Act, these regulations could not extend the provisions of the present Act to the Santhal Pargannas, that area would be without any Municipal Act unless the Bihar and Orissa Municipal Act expressly was made applicable to it. So although Santhal Pargannas is a part of the Province of Bihar & Orissa it is expressly included in the area to which the Bihar and Orissa Municipal Act will apply as otherwise there would be no municipal law for it by the repeal of the Bengal Municipal Act (Act IV of 1884).

**Sub-section (3).** The Act received the assent of the Governor-General on the 8th November 1922, and was published in the Bihar and Orissa Gazette of the 22nd November 1922.

By Notification No. 5670 of Local Self-Government dated the 23rd November 1922, this Act came into force on the 1st of January 1923.

See Sec. 391 in this connection, it lays down that municipalities, their officers, appointments, rules, orders, by-laws, notifications and notices issued; taxes and rates imposed and proceedings taken under the old and repealed Act are not affected by the repealing Act and the officers continue in office and the rules, orders, etc., remain in force as if they were made or done

under the new Act until they are superseded by action taken under the new Act.

**Statement showing the date of establishment of each municipality :—**

**PATNA DIVISION.**

- (1) Patna City—November, 1864.
- (2) Barh—1st May, 1870.
- (3) Bihar—1st April, 1869.
- (4) Dinapur—1st July, 1887.
- (5) Khagoul—1st July, 1907.
- (6) Patna Administration Committee—1st April 1916.
- (7) Gaya—May 1866.
- (8) Tikari—October, 1885.
- (9) Daudnagar—October 1885.
- (10) Arrah—1st June, 1865.
- (11) Jagdispur—1st April, 1869.
- (12) Buxar—1st April, 1869.
- (13) Dumraon—1st April, 1869.
- (14) Bhabhus—1st April, 1869.
- (15) Sasaram—1st April, 1869.

**TIRHUT DIVISION.**

- (16) Chapra—April 1864.
- (17) Revelganj—17th August, 1876.
- (18) Siwan—April, 1869.
- (19) Motihari—15th April, 1869.
- (20) Bettiah—15th April, 1869.
- (21) Muzaffarpur—1st November, 1864.
- (22) Hajipur—1st June, 1869.
- (23) Lalganj—1st June, 1869.
- (24) Sitamarhi—1st October, 1882.
- (25) Darbhanga—1st November, 1864.
- (26) Madhubani—1st April, 1869.
- (27) Roserah—1st April, 1869.
- (28) Samastipur—1st January, 1897.

**BHAGALPUR DIVISION**

- (29) Monghyr—1864.
- (30) Jamalpur—1888.
- (31) Bhagalpur—1864.
- (32) Colong—1869.
- (33) Purnea—1864.

- (34) Kishenganj—1867.
- (35) Katihar—1905.
- (36) Forbesganj—1912.
- (37) Deoghar—1869.
- (38) Sahibganj—1888.
- (39) Dumka—1903.
- (40) Madhupur—1909.

#### ORISSA DIVISION.

- (41) Cuttack—4th July, 1876.
- (42) Jajpur—1st April, 1869.
- (43) Kendrapara—1869.
- (44) Balasore—1st April, 1877.
- (45) Puri—1st April, 1881.
- (46) Sambalpur—9th April, 1883.

#### CHOTA NAGPUR DIVISION.

- (47) Hazaribagh—1st April, 1869.
- (48) Chatra—1st April, 1869.
- (49) Giridih—1st January, 1902.
- (50) Ranchi—1st April, 1869.
- (51) Lohardaga—1st July, 1888.
- (52) Daltonganj—1st July, 1888.
- (53) Purulia—26th July, 1876.
- (54) Jhalda—1st July, 1888.
- (55) Raghunathpur—1st April, 1888.
- (56) Dhanbad—1st April, 1919.
- (57) Chaibassa—1st April, 1875.
- (58) Chakradharpur—1st July, 1917.

**Sub-Section 4** corresponds to sec. 5 of the Bengal Municipal Act which ran thus " Notwithstanding anything contained in sec. 3, this Act shall not take effect in any cantonment without the consent of the Governor-General in Council previously obtained, nor shall the Local Government extend this Act, or any part thereof, to any cantonment without such Consent." See also the last proviso to sec. 9 Ben. Mun. Act according to which when changes whether by exclusion or inclusion of any local area included in any cantonment from the Municipal Act were to be made notifications had to be issued under sec. 9 B. M. Act with the previous sanction of the Governor-General in Council.

Cantonments are governed by Cantonment Act XIII of 1889 (I. C.) and rules passed under it.

Repeals and  
amendments.

**2. (1) The enactments mentioned in the Second Schedule, so far as they are in force in the Province of Bihar and Orissa, are hereby repealed to the extent specified in the fourth column thereof.**

**(2) The enactments mentioned in the Third Schedule, so far as they are in force in the Province of Bihar and Orissa, are hereby amended to the extent and in the manner specified in the fourth column thereof.**

#### NOTES.

" The proposed amendments in the Bengal Ferries Act 1885 will obviate the necessity of special provisions as to municipal ferries in the Bill, and will bring the regulations of such ferries into conformity with that of District Board ferries. The provisions of the Bill regarding slaughter-houses and hackney-carriages contained in Chapters VIII and X, substitute for the hard-and-fast enactments of the Bengal Municipal (Slaughter-Houses and Meat-Markets) Act, 1865, and the Calcutta Hackney Carriage Act 1891, a more elastic power to make bye-laws suitable to the needs of the Municipality."

Notes on Clauses para. 1 B. & O. Gazette Extraordinary, dated 18th Nov. 1921.

See also sec. 2 of the B. M. Act in this connection, the provisions as to rules, bye-laws, etc., saving clause and notifications are omitted from this section.

The Bengal Municipal Act had been amended and altered in parts by several Acts of the Bengal Council and some Acts of the India Council. The Acts of the Bengal Council and Bihar and Orissa Council which amended the B. M. Act and constituted the law relating to the municipalities, which existed in the Province of Bihar and Orissa are enumerated in the Second Schedule to this Act and they were Acts VII of 1865, Act III of 1884, Act I of 1885, Act III of 1886, Act II of 1891, Act IV of 1894, Act I of 1896, Act II of 1910 (B. Council) and Act III of 1920 (B. & O. Council). The Acts of the India Council which amended the B. M. Act are Acts V of 1897 and Act I of 1903.

Section 4 of the Bengal Ferries Act (Act I of 1885) ran thus:—

" Nothing in this Act contained shall apply to any ferry deemed or declared to be a municipal ferry under the provisions of the Bengal Municipal Act 1884." So the Bengal Ferries Act did not apply to Municipal ferries. Sec. 4 of the Bengal Ferries Act has been repealed by Sch. II of this Act.

Sec. 35 of the Bengal Ferries Act runs thus. " It shall be lawful for " the Lieutenant-Governor " to order that any public ferry situated in any district in which a District Board has been established under the provisions of the Bengal Local Self-Government Act of 1885 [or situated within or adjacent to the limits of any municipality, shall be managed by such District Board or by the Commissioners of such Municipality as the case may be] and such District Board shall have all the powers vested in the magistrate of the district under this Act, except the powers specified in secs. 7, 17, 32 and " the Lieutenant-Governor " may further order that all or any part of the proceeds of such ferry and all or any part of the fines levied and compensation received under this Act in respect thereof, be paid into the [District or Municipal Fund as the case may be]." The words within brackets [ ] have been added to sec. 35 of the Bengal Ferries Act by Sch. III of the present Act.

So after these amendments there was no necessity of making special provisions in this Act about Municipal ferries; like ferries under the District Board Municipal ferries in Bihar and Orissa will be henceforth governed by the Bengal Ferries Act.

Definitions.

**3. In this Act, unless there be something repugnant in the subject or context,—**

"Building"

**(1) "building" means any house, hut, shed or other roofed structure, for whatsoever purpose and of whatsoever material constructed, and every part thereof, but does not include a tent, or other portable and merely temporary shelter;**

#### NOTES.

" The Bengal Municipal Act applies one set of provisions to "houses not being huts " and another set to " huts." It does not define the term "hut" which is an obvious defect and in practice has given rise to difficulties. Nor does it define the term " building." It defines " houses " as including " any hut, shop, warehouse or building." It seems preferable to adopt the plan followed in the United Provinces Municipal Act, 1916 defining " building " " part of a building," and " compound," and to make the building clauses relate to all buildings in the wide sense of the definition, giving power to make bye-laws with reference to the erection, re-erection or alteration of buildings generally, or of any class of buildings, such as huts." Notes on Clauses para. 2.

The definition is new and not to be found in the B. M. Act this definition and also those of ' compound,' ' hut,' ' part of a building ' are taken from the United Provinces Municipal Act II of 1916.



"Building" according to Webster's dictionary means "a fabric, or edifice constructed, a thing built."

"In law, anything erected by art, and fixed upon or in the soil composed of different pieces connected together, and designed for permanent use in the position in which it is so fixed is a building. Thus, a pole fixed in the earth is not a building, but a fence or wall is" Century Dictionary.

A detached wall built of masonry is not a masonry building as defined by sec. 3 cl. 25 of the Calcutta Municipal Act (Act III of 1899 B.C.). In the matter of Corporation of Calcutta *vs.* Jogeswar Laha 8 C.W.N. 487.

A corrugated iron shed with mat walls is a "building" as defined in the Calcutta Municipal Act. *Susarmoyee Dabee vs.* Corporation of Calcutta 7. C.L.J. 248.

A boundary or compound wall is not a "building" within the meaning of sec. 151 cl. (b) of the Calcutta Municipal Act. Corporation of Calcutta *vs.* Benoy Krishna Bose, 15 C.W.N. 84.

Where a rule framed by the Municipal Board (N.-W.P. and Oudh Municipalities Act) forbade the erection or re-erection of any "building" in the civil station except with the previous sanction of the Board, it was held that such prohibition could not apply to the inclosing by means of a canvas screen of a certain space adjoining a house. *Kamta Nath vs.* The Municipal Board of Allahabad, 28 All. 199.

The word "building" in the absence of any specific definition in the Act, should be construed in its ordinary sense and as including erections, structures, or buildings such as masonry walls. *Mohabir Das vs.* Gaya Municipality, 26 I.C. 651.

"Cart."  
**(2) "cart" means a vehicle ordinarily drawn by animals and not ordinarily used for the conveyance of human beings;**

#### NOTES.

"A separate definition of "carriage" is unnecessary. Sub-Clause (3) of clause 144 [sec. 187 (3) (a)] excludes carts from the tax on vehicles, and only such vehicles as are mentioned specially in the Schedule can be taxed." Notes on Clauses para. 8.

Compare the definition of the word in the B.M. Act according to which, "cart" means any cart, hackney or wheeled vehicle with or without springs ordinarily drawn by animals and not included in the definition of "carriage."

See in this connection clause 30 which defines vehicles.

**"Charitable purpose"** (3) **"charitable purpose"** includes the maintenance of an educational institution and the hostels attached thereto; which, though, wholly or partly self-supporting, is maintained without the purpose of profit;

## NOTES.

"The question often arises whether an educational institution can be deemed to be maintained for a charitable purpose; the proposed definition is intended to solve the difficulty." Notes on Clauses para 4.

Definition new and there is no similar definition in the B. M. Act. Schools and Colleges were under the old Act subject to pay rates and taxes. Now if they are maintained without the purpose of profit, they can be exempted by the Local Government on the recommendation of the Commissioners at a meeting. See sec. 84 (3).

**"Conservancy"** (4) **"conservancy"** means the removal and disposal of sewage, offensive matter and rubbish;

## NOTES.

"The substitution of a conservancy tax for the present latrine fees requires a definition of conservancy." Notes on Clauses para. 5.

Definition new. Conservancy according to Webster means conservation specially official conservation, as of trees, river, etc., from injury, defilement or irregular use, or of public health.

**"Compound"** (5) **"compound"** means land, whether enclosed or not, which is the appurtenance of a building or the common appurtenance of several buildings.

## NOTES.

Definition new and taken from The United Provinces Municipal Act. See notes to Sec. 3 clause 1. "Compound" according to Webster means an inclosure containing a house, out buildings, etc., specially one occupied by foreigners.

**"Drain"** (6) **"drain"** includes a sewer, a house-drain, a drain of any other description, a tunnel, a culvert, a ditch, a channel and any other device for carrying of sewage, offensive matter, rain water or sub-soil water;

## NOTES

" The present Act contains no definition of " drain," " house gully," " hut " and " market "; definitions seem necessary and have been borrowed from The Calcutta Municipal Act." Notes on Clauses para. 6.

Definition new and not to be found in the B. M. Act.

" Drain " includes a jhora, water-course, channel or natural drainage line according to The Darjeeling Municipal Act Sec. 4.

According to Webster " drain " means that by means of which anything is drained; a channel, a trench, a water-course, a sewer, a sink. Drain was not a part of the street according to Madras District Municipal Act. Wenkattam Chetty *versus* Emperor, 28 Madras p. 17.

Drain means not merely a channel but a channel used for the flow of offensive matter; before a channel can be called a drain within the term of the Municipal Act, it must be shown that offensive matter is carried by it. Kasi Paty Mukerjee *versus* Chairman, Puri Municipality. 40 Indian Cases p. 552=1 P.L.W. 774.

"Driver" **(7) " driver," when used in relation to vehicles propelled or drawn by men, means a person who propels or draws such vehicle;**

## NOTES

Definition new. This clause contemplates " Jin rickshaws " and " Push-pushes " as are used in Chota-Nagpur.

"Food" **(8) " food " includes every article used for food or drink by man, other than drugs or water, and any article which ordinarily enters into or is used in the composition or preparation of human food; and includes flavouring matters and condiments;**

## NOTES

Definition new and taken from 62 and 63 Victoria. Chap. 51, S. 26.

"Holding" **(9) " holding " means land held under one title or agreement and surrounded by one set of boundaries:**

**Provided that, where two or more adjoining holdings form part and parcel of the site or premises of a dwelling house, manufactory, warehouse or place of trade or business, such holdings shall be deemed to be one holding for the purposes of this Act other than those mentioned in clause (a) of sub-section (1) of section 82;**

*Explanation.*—Holdings separated by a road or other means of communication shall be deemed adjoining within the meaning of this proviso.

## NOTES.

“ The definition of “ holding ” has given rise to difficulties in the past owing to the uncertainty of the proper interpretation of the words “ under one title or agreement.” In the case of a sublease, the existing Act does not specify whether the lessor or the sub-lessor is to be taken to be the owner. The provisions of clause 101 (sec. 99) of the Bill will enable the Commissioners to decide any question that may arise in this connection.” Notes on Clauses para. 7.

Definition same as in the B. M. Act, sec. 6 (3). “ Holding ” means the land and houses on it and the things attached to the earth. There is no definition of the word “ land ” in this Act. According to the B. M. Act sec. 6 clause (5) “ immovable property ” and “ land ” include (besides land) benefits arising out of land, houses, things attached to the earth, or permanently fastened to anything attached to the earth.

Land in B. M. Act included not only the surface but everything under or over it.

The word ‘ holding ’ is wide enough to cover arable land which is therefore, liable to be assessed under the provisions of the B. M. Act. *Mohadev Aon versus* Chairman of the Howrah Municipality. 37 Calcutta 697 = 14 C.W.N. 85.

A holding means land held by an occupier under one title and one set of boundaries. *Syed Shah Hamid Hossein versus* Patna Municipality, 17 C.W.N. 812.

For the purposes of the proviso, a Zemindar’s kutchery and his Naib’s quarters, adjoining each other, were one holding. *Gobindo Chandra Ganguly versus* Kailash Chandra Sanyal, 15 C.L.J. 689.

**Several houses within one compound :—**“ If such houses are distinct and form separate dwellings intended or suited for different occupants, there is no legal objection to their being treated as different holdings provided the owner divides the compound into parts by metes and bounds and assigns to each house a separate compound which will thus be a separate set of boundaries.” Opinion of Legal Remembrancer, No. 29, dated 7th April 1904 (Govt. Circulars, 2nd edition, Volume 3, page 996).

The splitting of a holding held under one title and surrounded by one set of boundaries, into two separate holdings and separate valuation and assessment thereof is not justified under the Bengal Municipal Act. *Tara-pada Majumdar versus* Satish Chandra Saha. 46 Calcutta 784.

Where two adjacent plots of land bounded by one set of boundaries are held by the same person as owner, they must be deemed to be held by him under one title and constitute one holding within the meaning of section 6 (3) of the B. M. Act. It makes no difference that one plot was acquired by survivorship and the other by purchase. In such a case the owner of the plots is liable to only one assessment in respect of the plots under section 85A of the Act and not to separate assessments in respect of each plot. *Tulsi Prasad versus J. A. W. Wilson*, Chairman, Dumraon Municipality, 7 P.L.T. 85=90 Indian Cases 74.

"House-gully"

**(10) "house-gully" means a passage or strip of land constructed, set apart or utilised for the purpose of serving as a drain or affording access to a latrine, urinal, cess-pool or other receptacle for filthy or polluted matter to municipal servants or to persons employed in the cleansing thereof or in the removal of such matter therefrom, and includes the air-space above such land;**

#### NOTES.

"This definition is required in connection with provisions designed to meet the difficulty at present experienced in preventing encroachments on passages used by Municipal sweepers when cleansing private latrines." Notes on Clauses para. 8.

Definition new and not to be found in the B. M. Act. See sections 196 to 203 and notes thereto in this connection.

"Hut"

**(11) "hut" includes all latrines, urinals, out-houses and other subsidiary buildings on the same holding as a hut;**

#### NOTES.

See notes to clause (1). Definition new. The B. M. Act does not define "hut."

In the Calcutta Municipal Act section 3(22) it is defined as meaning any building no material portion of which above the plinth level is constructed of masonry.

"Hut" according to Webster means "a small house, hovel or cabin; a mean lodge or dwelling; a cottage. It is particularly applied to log-houses erected for troops in winter."

"The Magistrate"

**(12) "the Magistrate" includes the District Magistrate, the Magistrate in charge of the subdivision in which a municipality is constituted and any Magistrate subordinate to the District Magistrate to whom the District Magistrate has made over any of his duties under this Act;**

## NOTES.

Definition same as in the B. M. Act, Sec. 6 (8).

"Market."

**(13) "market" includes any place where persons periodically assemble for the sale of meat, butter, ghi, fish, fruit, vegetables or live stock;**

## NOTES.

Definition new and taken from the Calcutta Municipal Act, sec. 3 (24). In the Bengal Municipal Act "market" was defined in sec. 336 and applied only to places where at least 30 shops, stalls or standings were erected for the sale of goods; the present definition is more wide and includes every place where people periodically assemble for the sale of meat, etc. The old definition of market gave rise to difficulties and restricted the power of control unduly. See in this connection notes to sec. 275.

Webster defines "market" as a meeting together at a stated time and place for the purpose of traffic by private purchase and sale and not by auction.

Under the present definition a few persons dealing in any one of the commodities namely meat, butter, etc., if they periodically assemble at a place, it would become a market even if they assemble in private lands or premises.

"Municipality."

**(14) "municipality" means any local area declared by or under this Act to be a Municipality.**

## NOTES.

The definition is taken from the Punjab Municipal Act. Compare the definition in the B. M. Act, section 6 (9) where it is defined as any place in which this Act, or any part thereof is in force.

Section 391 declares that all municipalities constituted under any of the enactments repealed by sec. 2 shall be deemed to have been constituted under this Act. The present definition includes municipalities created by the old Acts.

"Occupier"

**(15) "occupier" includes an owner in actual occupation of his own land or building;**

## NOTES.

Definition new and taken from the United Provinces Municipal Act. Compare the definition in Calcutta Municipal Act, sec. 3 (30) in which "occupier" means any person for the time being paying or liable to pay, to

the owner, the rent or any portion of the rent of the land or building in respect of which the word is used and includes an owner living in his own house or hut.

**"Offensive matter."** (16) **"offensive matter"** means dirt, dung, putrid or putrefying substances, and filth of any kind not included in the term **"sewage"**

#### NOTES.

Definition same as in the B. M. Act, sec. 6 (10). Rules for the removal of the offensive matters are given in secs. 204 and 207 and the penalties for non-removal are prescribed by secs. 211 and 212.

Rice-water or rain water is not offensive matter and a cistern for collection of rice-water and rain water is not a cesspool. Kasi Pati Mukherji *versus* Chairman of Puri Municipality, 40 Indian Cases 552=1 P.L.W. 774.

**"Officer of the Commissioners"** (17) **"officer of the Commissioners"** means a person holding for the time being an office created or continued by or under this Act, but does not include a Municipal Commissioner or the member of a Committee or Joint Committee constituted under this Act.

#### NOTES.

Definition is new and taken from United Provinces Municipal Act. See sec. 132 by which all officers and servants of the Commissioners and *chowkidars*, etc., are prohibited from purchasing any property in sales on distraint for taxes; this sub-section explains the term.

**"Owner"** (18) **"owner"** includes—

- (a) every person who is entitled for the time being to receive any rent in respect of the land with regard to which the word is used, whether from the occupier or otherwise;
- (b) a manager on behalf of any such person;
- (c) any agent for any such person; and
- (d) a trustee for any such person;

Provided that no such manager, agent, or trustee shall be liable to do anything required by this Act to be done by the owner, nor shall he be subject to any fine for omitting to do such thing, unless he have sufficient funds in his hands as such manager, agent or trustee to do such thing;

## NOTES.

Definition same as in B. M. Act, sec. 6 (11). Compare the definition of "owner" in sec. 8 (32) Calcutta Municipal Act. The effect of the word "include" is to give an extending signification to the word defined; while the word "means" limits the meaning of the word.

The word "include" is generally used in interpretation clauses to enlarge the meaning of words so as to make them comprehend not only such things as they signify according to their natural import but also the things they are declared to include. An owner, therefore for the purposes of the Municipal Act, includes not only an owner in actual occupation of the holding but also an owner entitled to receive rent from the occupier or otherwise. This definition, it must be remembered, however, was framed not so much with a view to confer rights as to impose liabilities, as is usual in statutes of this description. Where a house was purchased in the name of the father, and the major portion of the consideration money was paid by the son out of the joint funds belonging to himself and his brothers and further the expenditure on subsequent extensive alterations and additions were similarly defrayed by the son out of the said funds and the son was occupying the house while the father was living abroad held that the son having a substantial interest in the property should be treated as owner in the ordinary acceptance of that term and he being the manager or agent of the father could also be treated as owner and he was therefore liable to pay rates. *Narendra Nath Sinha versus Nagendra Nath Biswas*, 38 Cal. 501 (509) = 15 C.W.N. 586.

It is recognised in England to be a rule with regard to the effect of interpretation-clauses of a comprehensive nature that they are not to be taken as strictly defining what the meaning of a word must be under all circumstances, but merely as declaring what things may be comprehended within the term where the circumstances require that they should. *Emperor versus B. H. DeSouza*, 35 Bom. 412.

The word "includes" is a phrase of extension and not of restrictive definition. It is not equivalent to "means," *The Queen versus Kershaw* (1856) 6 E. & B. at p. 1007; *The Queen v. Herman* (1879) 48 L.J.M.C. 106. But as said by Lord Watson:—"include" is very generally used in interpretation clauses to enlarge the meaning of the words or phrases occurring in the body of the statute, and when it is so used these words or phrases must be construed as comprehending, not only such things as they signify according to their natural import, but also those things which the interpretation clause declares that they shall include. But the word "include" is susceptible of another construction, which may become imperative, if the context of the



Act is sufficient to show that it was not merely employed for the purpose of adding to the natural significance of the words or expressions defined. It may be equivalent to mean and include, and in that case it may afford an exhaustive explanation of the meaning which, for the purpose of the Act, must be invariably attached to these words or expressions." *Dilworth vs. Commissioner of Stamps* [(1899) A.C. 99 at pages 105 to 106]. *Municipal Commissioner of Bombay vs. Mathura Bai*, 30 Bombay 558 at page 566.

A receiver appointed by the High Court is not an "owner" of the premises he holds as such, nor is he an "agent or trustee" within the definition of the term in section 3 (32) of Calcutta Municipal Act. Although properties are in the hands of a receiver, it is the owner who is liable to carry out requisitions and it is incumbent on him to request the receiver to comply with the notice. *Corporation of Calcutta vs. Haji Kasim Ariff*, 38 Calcutta 714. See also *W. R. Fink vs. Corporation of Calcutta*, 30 Calcutta 721.

Where there is an intermediate interest between the owner and the occupier, such intermediate holder and not the ultimate owner is a person liable to pay taxes. The rates assessed upon holding according to sec. 101 B. M. Act are payable by the owner, that is to say, the person above the occupier, if the occupier is not the owner under sec. 103 B.M. Act. *Syed Shah Hamid Hossein vs. Patna Municipality*. 17 C.W.N. 812.

Where the petitioner being one of several *shebait*s who had his last turn of worship in 1906 and had since then no hand in the management of the *Debutter* properties was convicted under sec. 575/408 Calcutta Municipal Act. for non-compliance with a notice under sec. 408 Calcutta Municipal Act, calling upon him to carry out certain improvements in a *bustee* which was one of the *Debutter* properties held that the petitioner was not an owner within the meaning of sec. 3 (32) of the Act, inasmuch as though he might be regarded as a manager for the deity yet he was not receiving the rent. *Ratnendralal Mitter vs. Corporation of Calcutta*, 41 Calcutta 104=17 C.W.N. 1084.

A mortgagor in possession is an owner, so also a *shebait* is an owner if he realises rent.

The term "owner" includes a part proprietor. *Nripendra Kumar Dutta vs. Chairman of Habiganj Municipality*, 85 Indian Cases 533=1926 Calcutta 261 (A.I.R.).

"Part of a building"

(19) "part of a building" includes any wall, underground room or passage, verandah, fixed platform, plinth, staircase or door-step attached to, or within the compound of, an existing building or constructed on ground which is to be the site or compound of a projected building;

NOTES.

The definition is new and taken from the United Provinces Municipal Act. See notes to clause (1) ante.

"Platform." (20) "platform" means any structure which is placed on or covers or projects over any road or any open drain;

NOTES.

"This definition is rendered necessary by the inclusion of provisions regulating construction of platforms and other structures over roadside drains by the owners and occupiers of houses adjacent to the Municipal roads." Notes on clauses para 9.

This definition is new and taken from the Calcutta Municipal Act, sec. 3 (34). See sec. 180 and notes thereto in this connection.

"Pony." (21) "pony" means a horse not exceeding fourteen hands in height;

NOTES.

Definition entirely new. Schedule 1 prescribes the rate of taxes on horses and ponies and this definition is necessary for the purposes of classification.

"Prescribed." (22) "prescribed" means prescribed by rules made by the Local Government under this Act.

NOTES.

See secs, 18 & 19 & sec. 391 and notes thereto and also the appendix for the rules made by the Local Government under this Act. Prescribed means duly or lawfully prescribed.

"Public place." (23) "public place" means a space, not being private property, which is open to the use or enjoyment of the public, whether such space is vested in the Commissioners or not;

NOTES.

The definition is new and taken from United Provinces Municipal Act, sec. 2 (14). See notes on clauses para 10 quoted in notes to clause 24.

"Road." (24) "road" means any road, bridge, footway, lane, square, court, alley or passage which the public or any portion of the public has a right to pass along, and includes, on both sides, the drains or gutters and the land up to the defined bound-

ary of any abutting property, notwithstanding the projection over such land of any platform, verandah or other superstructure.

### NOTES.

Definition is borrowed from the United Provinces Municipal Act, sec. 2 (28). "Doubts often arise as to the exact boundaries of a road. The existence of a structure at the road side is often regarded by the courts as *prima facie* evidence that the land on which it stands is not part of the road, but is private property and the onus of proof falls on the municipality. Usually the municipality fails to obtain the necessary proof and loses the case in consequence. It is, therefore, necessary to amplify the definition, and provide that a road "includes on either side the drains or *gullies* and the land up to the defined boundary of any abutting property, notwithstanding the projections over such land of any verandah or other superstructure." Notes on Clauses p. 10. Compare the definition in the B.M. Act, sec. 6 (18) according to which "road" means any road, street, square, court, alley or passage whether a thoroughfare or not, over which the public have a right of way.

**Rights of way are divisible into two classes:** Public rights of way and private rights of way. A public right of way is the right of the public in general to pass and repass along a highway. User of the highway by a member, or members of the public for any other purpose would be in law trespass. Subject to the right of way, the soil of the road and every right incident to the ownership of the soil remains in the owner of the property. So in the case of *St. Mary Newington vrs. Jacob*, it was said, "the owner who dedicates to public use as a highway a portion of his land, parts with no other right than a right of passage to the public over the land so dedicated, and may exercise all other rights of ownership not inconsistent therewith." Peacock on Easement p. 80 (2nd Edition).

The Bengal Act defined "road" as a road, street, etc., over which the public have a right of way, the present Act defines it as a road, etc., which the public or a portion of the public has a right to pass along. There is a great difference in the meaning of the word "road" as used in the two Acts; the length of time during which a road was to be used to give a right of way to the public, the proof of dedication and the intention to dedicate to the public were all matters left to be decided by the circumstances of a case under the old definition and the distinction between roads vested in the Commissioners and roads not so vested have all been done away with by the present definition of the word "road." The present definition will include any passage over which the public pass or repass along no matter how long

or that it is private property and under sec. 58 of the present Act, it will be under the direction and management and control of the Commissioners.

“ Road ” has been held to include a path, which the public had a right of using over a low ridge between paddy fields. The term “ road ” is not limited to roads vested in the Municipal Commissioners but includes all roads within the definition given in the Act. *Ram Chandra Ghosh vs. Bally Municipality*, 17 Calcutta 684.

The test of a road is not whether it is a thoroughfare, but whether the public have got a right of way over it. Every road, street or other place mentioned, over which the public have a right of way was therefore a road under the B.M. Act; and all roads were vested in the Municipal Commissioners by sec. 30 (See 58).

In order to establish that a road is a public road, it is sufficient if acts of user by the public are shown to have been acquiesced in by the owner of the land over which the road passes, and that those acts are of such a character as to warrant the inference that the owner intended to make over to the public the right to use the land as a public highway. *J. Anderson vs. Juggodumba Debi*, 6 C. L. R. 282.

In *Chunilal vs. Ramkissen Sahu*, 15 Calcutta 460 (F.B.) Mr. Justice Wilson observed as follows:—

“ By the common law of England there are three distinct classes of rights of way and other similar rights. First, there are private rights in the strict sense of the term vested in particular individuals or the owners of the particular tenements and such rights commonly have their origin in grant or prescription. Secondly, there are rights belonging to certain classes of persons, certain portions of the public such as the freemen of a city, the tenants of a manor or the inhabitants of a parish or village. Such rights commonly have their origin in custom. Thirdly, there are public rights in full sense of the term which exist for the benefit of all the Queen's subjects; and the source of these is ordinarily dedication. It is unnecessary to enquire whether the mode of acquiring each of these classes of rights is necessarily the same in all cases in England and in India. But it is, I think important to remember that these three classes of rights exist in one country as well as in the other. The first class strictly private rights we are all familiar with. The third class public rights are of frequent occurrence. The second class of rights belonging to a portion of the public are also to be found in India.”

In *Akshoy Kumar Ghosh vs. Commissioners of the Port of Calcutta*, 38 Calcutta 1249, Mr. Justice Woodroffe laid down that “ a public

rights of way may be created either by act of the legislature or by dedication express or presumed, by the owner of the land to the general public. The acquisition under the Land Acquisition Act did not create any public statutory road. The declaration of a "public purpose" under the Land Acquisition Act, did not make the road a public road." So also in *Chairman Howrah Municipality vs. Kshetra Krishna Mitra*, 33 Calcutta 1290 Justice Sir Ashutosh Mukherjee held that "an exclusive and continuous user by the public with the owner's knowledge and acquiescence for the prescription period will raise the presumption of a grant or dedication to the public. Where a dedication is implied only, the question may arise whether the dedication was of the entire ownership of the land or merely the right of user. To constitute a valid dedication it is not essential that the legal title should pass from the owner. It is not inconsistent with an effectual dedication that the owner should continue to make any and all user of the land which do not interfere with the user for which it is dedicated. One of the essential elements of good dedication is that it is made to the public, that it is irrevocable and that the land is for ever dedicated for the designated public use."

From these dicta quoted above it will appear that the origin of a public right of way is ordinarily dedication whether express or implied.

"The single word 'road' does not appear to be an English legal term at all. It finds no mention in Blackstone who speaks only of ways, highways or turnpikes. Roads therefore as defined in this Act (B. M. Act,) would be according to their importance one or other of the above three mentioned to which should be added "street" which is defined in English law as a road-way which has on one or both sides of it a more or less continuous row of houses. The word road as defined in sec. 6 (13) of the Act, is generally a comprehensive term including all places over which the public have the right of way." "Roads in England are highways which under the Highway Act, of 1835 means all roads, bridges not being County bridges, roads, carriage ways, cart ways, horse ways, bridle-ways, foot ways, causeways, whenchways and pavements and such of these as under the common law are highways also, i.e., a way over which all members of the public are entitled to pass and repass are dealt with under that Act." Justice Pargiter's *Bengal Municipal Act*, p. 50. "The public right in a highway being a right of passage only an owner who dedicates or is presumed to have dedicated land as a public highway retains at common law his property in the soil." "The vesting of a highway in a Local Authority does not empower it to interfere with the subsoil."

“ Once a highway, always a highway. The local authority cannot in Common Law give up the public rights, subject to certain qualifications. At present these qualifications are set out in the Highways Act, under which there is an elaborate procedure before the Justices of the Quarter Sessions by which a highway may be stopped.” Justice Pargiter's B. M. Act, p. 50-51, (2nd Edition).

A public way may pass through private property; in that case it must have at each end a public terminus: the terminus may be sufficient although it has not in the ordinary sense an exit, it may be a cul-de-sac (a lane one end of which is closed—a blind lane). But a mere private place, not admitting of a passage through or beyond it cannot form the terminus of a public way. *Young vrs. Cuthbertson* (1851) 1 Macq. H. Cases 455.

A lane which though at one time private property had been for upwards of 30 years used by the public generally and had been lighted, drained and swept by the Municipality, was a street within the meaning of sec. 3 of the United Provinces Municipal Act, and was not the less a ‘ street ’ because it happened to be a cul-de-sac. *Municipal Board of Bulund Sahar vrs. Dakhkhān Lal*, 30 Allhabad 70. See also the case of Municipal Commissioners of Bombay *vrs. Mathurabashi*, 30 Bombay 558, at p. 564 where it was held that “ a vacant space in front of Mathurabashi's house when, and if, laid out as a means of passage with houses on both sides and when, and if, used as such by the occupiers of such house and not by the public generally will constitute a ‘ street ’ within the meaning of the Bombay Municipal Act.”

In the Bombay Municipal Act, the word ‘ street ’ is used and is equivalent to road. It was held that a mere fact that a street is lighted or swept by a Municipality is not of itself sufficient to convert a private into a public street. *Ankleswar Municipality vrs. Rikhav Chand*, 25 Bombay 315.

Drain was not a part of a street according to Madras Municipal Act. *Venkatama Chetty vrs. Empress*, 28 Madras 17.

Where certain land is kept open for the purpose of allowing people generally to pass over it to visit a religious car preserved in a shed in the road and the people pass over by the implied permission of the *shebais* to pay *pranami* to the idol in the car and for a certain time in each year traffic is entirely stopped and the land is covered by temporary sheds erected by the shop-keepers from whom the *shebais* collect toll, held that the public have no right as of way over the open road, which is not therefore a road as defined by sec. 6 (13) of the B. M. Act. *Kumud Bandho Das vrs. Kishori Lal*, 9, I.C. 562.

**Any portion of the public.**—this reservation is necessary as the definition will include passages leading to *bustees* and officers' quarters which a portion of the public has only occasion to use.

"Rubbish."

**(25) "rubbish" means broken brick, mortar, broken glass, kitchen or stable refuse and refuse of any kind whatsoever not included in the term "offensive matter";**

#### NOTES.

Definition same as in B. M. Act, sec. 6 (14).

"Offensive matter" is defined in clause (16) and means dirt, dung, putrid or putrefying substances and filth of any kind not included in the term "sewage."

The duties of Commissioners in regard to the removal and disposal of rubbish are laid down in section 204 and fees for removal and penalties for non-removal are prescribed by sections 210 and 212 respectively. The definition is necessary as the Commissioners have different powers to deal with these different classes of matter. *Vide* secs. 204 to 221.

"Salaried servant of Government."

**(26) "salaried servant of Government" means a whole-time officer of Government who receives his salary direct from Government, and includes a manager of an estate under the Court of Wards, but does not include an officer whose services have been lent by Government to a local authority or a retired servant of Government in receipt of a pension;**

#### NOTES.

Definition entirely new. This definition is necessary to explain the expression as used in sections 20 and 23 by which double disqualifications have been imposed on such men, they can neither vote nor be eligible for election as a Chairman; but they are entitled to vote in the election of a *vice-chairman*, though not entitled to election.

"Servant of the Commissioners."

**(27) "servant of the Commissioners" means any person in the pay and service of the Commissioners;**

#### NOTES.

The definition is new and taken from the United Provinces Municipal Act, sec. 2 (22). See sec. 132 in which the term occurs.

"Sewage."

**(28) "sewage" means any night-soil and other contents of latrines, urinals, cesspools and drains, and includes polluted water from kitchens, sinks, bath-rooms, stables, cattle-sheds and other like places;**

# NOTES.

"Sewage" as defined in sec. 6 (17) B. M. Act, means night-soil and other contents of privies, drains and cesspools.

"The definition of sewage in the Bengal Act, is not sufficiently wide; polluted water from vats, sinks, bath-rooms, stables and cattle-sheds the removal of which is such a troublesome problem in all the larger Municipalities is really from the sanitary point of view sewage." Notes on clauses para 11.

"The Act does not seem to be always consistent in its use of the words 'privy' and 'cesspool' and also the word 'latrine.' These words are not defined in the Act, and appear to be more or less interchangeable. There are three definitions of matter in which the Commissioners are given special powers as to removal—'offensive matter,' 'rubbish' and 'sewage.' The first is defined in clause 10, (corresponding clause 16) is roughly speaking filth, not being in a privy, cesspool or drain. Rubbish is all other refuse, including stable droppings, and broken bricks, old bottles and the like. Sewage is the contents of drains and cesspools only. The distinction is necessary, as the Commissioners have different powers for dealing with these different classes of matter in the subsequent sections of the Act." Justice Pargiter's B. M. Act, p. 14, (2nd Edition).

The duties of the Commissioners in regard to the removal of sewage are laid down in secs. 204 & 207, and penalties for non-removal are prescribed in sec. 212. The powers of the Commissioners to deal with 'sewage,' 'offensive matter' and 'rubbish' are given by secs. 204 to 221.

"According to Webster's Dictionary "privy" and "latrine" mean practically the same, "a private and necessary place," "cesspool" means a cistern in the course or at the termination, of a drain to collect sedimentary or superfluous matter; any receptacle of filth."

"Cesspool" (from cess-pool) means 'a pool into which all foul matters flow,' 'a soak pool.' Justice Pargiter's B. M. Act, p. 14-15.

**(29) "the Commissioners" means the persons for the time being appointed or elected to conduct the affairs of any Municipality under this Act;**

# NOTES.

The Commissioners mean the entire body of Commissioners. The Chairman of the Commissioners under sec. 24 exercises all the powers vested by this Act in the Commissioners, but he cannot exercise any of the powers which is directed to be exercised by the Commissioners at a meeting; nor



shall he act in opposition to or in contravention of, any resolution of the Commissioners at a meeting.

"Vehicle."  
**(30) " vehicle " means a wheeled conveyance capable of being used on a road and includes a motor car, tricycle, bicyole, a jinrickshaw and a shampani ;**

#### NOTES.

Definition new and taken from the Punjab Municipal Act, (Act. III, of 1911) sec. 3 (14).

" A separate definition of carriage is unnecessary. Sub clause 3 of clause 144 [i.e. sec. 1878(3) (a)] excludes cart from payment of the tax on vehicles, and only such vehicles as are mentioned specifically in the shedule can be taxed." Notes on clauses para. 3.

According to the B. M. Act, 'carriage' means any wheeled vehicle with springs used for the conveyance of human beings, and ordinarily drawn by animals.

Bicycles, motor cars, tricycles, jinrickshaws and shampanies could not come within the definition of ' carriage ' in the B. M. Act, and so they have been expressly included in this Act, within the definition of vehicles to enable the Commissioners to tax them if they so desire.

The term " vehicle " replaces the term " carriage " of the B. M. Act. The vehicles which are subject to pay taxes are enumerated in schedule 1 to this Act; and under sec. 82 the Commissioners may at a meeting convened expressly for the purpose and subject to the provisions of this Act, and the sanction of the Local Government impose taxes on vehicles of any class.

**(31) " water for domestic purposes " shall not include water for cattle, or for horses, or for washing carriages, where the cattle, horses or carriages are kept for sale or hire or by a common carrier, or water for any trade, manufacture or business or for building purposes, or for watering gardens, or for fountains, or for any ornamental purpose; and**

"Water for domestic purposes."

#### NOTES.

Definition new and taken from U.P. Act, II, of 1916 sec. 2 (25).

Chapter IX of the Act, is devoted to water supply, lighting, drainage and sewerage systems. After the scheme of water supply is sanctioned by the Local Government under sec. 294 the Commissioners shall provide a supply of water for domestic purposes and shall cause mains and pipes to

be laid (sec. 318); the Commissioners may also supply water for purposes other than domestic purposes (sec. 315). It is to explain the expression as used in secs 318 and 315 that this definition is introduced.

According to the rules framed by the Surat City Municipality "Domestic purposes" mean and include drinking, cooking, washing and other such legitimate household purposes of a family but do not include house-building or ornamental or kitchen gardening when the area of the garden exclusive of walks and foot-paths exceed 200 square yards. The definition of "domestic purposes" meant nothing more or less than legitimate household purposes. The Surat City Municipality Trs. Tyabji Daudbhai, 32 Bombay 460.

"Year."

**(32) "year" means a year beginning on the first day of April or on such other date as may hereafter be fixed for any municipality by the Local Government by notification.**

#### NOTES.

Definition same as in B. M. Act, sec. 6 (19). No other date has been fixed for any Municipality.

## CHAPTER II.

### CONSTITUTION AND GOVERNMENT OF MUNICIPALITIES.

#### *The Creation of Municipalities.*

"Declaration of intention to constitute or alter limits of municipality."

**4 (1) (a) When the Local Government is satisfied that three-fourths of the adult male population of any town are engaged on pursuits other than agricultural and that such town contains not less than five thousand inhabitants, and an average number of not less than one thousand inhabitants to the square mile of the area of such town, the Local Government may declare its intention to constitute such town, together with or exclusive of any railway station, village, land or building in the vicinity of such town, a municipality, and to extend to it all or any of the provisions of this Act.**

**(b) When the Local Government is satisfied that any municipality, or any area in a municipality, does not fulfil the conditions specified in clause (a), or when the Commissioners at a meeting have made a recommendation in this behalf, the Local Government may declare its intention**

to withdraw such municipality from the operation of this Act, or to exclude such area from such municipality.

(c) When the Commissioners at a meeting have made a recommendation in this behalf, the Local Government may declare its intention to include within a municipality any area contiguous to the same, or to subdivide any municipality into two or more municipalities.

(d) When the Commissioners of each of the municipalities concerned at a meeting have made a recommendation in this behalf, the Local Government may declare its intention to unite two or more municipalities so as to form one municipality.

(2) Every declaration under this section shall be published in the Gazette, and in such other manner as the Local Government may direct.

(3) If any part of a town or local area affected by any declaration under this section is a cantonment or part of a cantonment, no declaration under this section shall be made without the previous consent of the Governor-General in Council.

#### NOTES.

" This clause places the provisions of sections 8, 9, 10 of the Bengal Act in a clearer form " Notes on Clauses para 12. " The provisions of the existing Act regarding the conditions necessary for the establishment of a municipality have been restored " Report of the Select Committee on the Bihar and Orissa Municipal Bill, para 2.

The section corresponds to secs. 8, 9 and 10 of the B. M. Act.

**Sub-section (1) (a):**—In order to justify the declaration of intention of the Local Government to constitute an area a municipality the following conditions must be satisfied, (1) it must be a town, (2) it must contain not less than 5,000 inhabitants, (3) it must contain an average of not less than 1000 inhabitants to every square mile and (4) three fourths of its adult male population must be engaged in pursuits other than agriculture.

Under the Bengal Act, sec. 10, the number of inhabitants were required to be not less than 3000, the other criterions being the same.

**Satisfied:**—Either from the census, or special enquiries undertaken in this behalf, or from recommendations from the local authorities.

**Clause (b):**—Corresponding sec. 9 (a) and (b) of B. M. Act.

Section 9 of B.M. Act, was substituted for the original sec. 9 of the Act, III of 1884 (B.C.) by Bengal Act IV of 1894. The section gives wider

powers to the Local Government, to exclude any area from the operation of the Act, not only when there was a recommendation from the Commissioners at a meeting but also to act on its own initiative when it was otherwise satisfied either from the census or from special enquiries that it no longer complied with the conditions laid down in cl. (a).

**Clause (c):**—Corresponds to sec. 9 (c) & (d) of B. M. Act. To act under this clause and the next one the Local Government cannot act on its own initiative but only on the recommendations of the Commissioners at a meeting. Whether any area contiguous to a municipality should be included within a municipality or there should be a subdivision of any municipality into two or more, or that two or more municipalities should be united together are matters which would be better left to the municipal administration itself, which on working out the Act would be better judges and would be in a better position to advise about the feasibility of any of these things.

**Clause (d):**—Cor to sec. 9 B. M. Act.

**Sub-section (2):**—The declarations of the Local Government have to be published in the Gazette and in such other way as the Local Government directs. In the corresponding section 9 of the B. M. Act the declaration, etc., had to be published by notification (which word had a separate definition) in the Calcutta Gazette.

Consideration of  
objections.

**5. The Local Government shall take into consideration any objection submitted through the District Magistrate within six weeks from the date of the publication of a declaration under section 4, by any inhabitant of the town or area, or any rate-payer of the municipality concerned, and in the case of a declaration under clause (a) of sub-section 1 of the same section, by the district board of the district in which the town is situated.**

#### NOTES.

The section corresponds to sections 8 & 9A, of the B. M. Act. The sections 8 & 9A of the B. M. Act gave the rate-payers, inhabitants of a local area an opportunity of stating their objections to the changes proposed specially when the Local Government was proceeding of its own motion. This section also provides that when the Local Government intends to constitute any town or area a new municipality the persons likely to be affected thereby shall have the right to submit objections through the District Magistrate, within a period of 6 weeks. This section enables the District Board to file objections when a new municipality is sought to be created in any

area over which it has control. The District Board may object on the ground that it has itself taken sufficient measures for sanitation, etc.

**6. The Local Government may thereupon, by notification,**  
 Constitution, abolition or alteration of limits of a municipality.

(a) constitute the town or any specified part thereof a municipality, and extend to it all or any of the provisions of this Act, or

(b) withdraw the whole area comprised in the municipality from the operation of this Act, or

(c) include the local area or any part thereof in the municipality or exclude it therefrom, or

(d) subdivide the municipality into two or more municipalities, or unite the municipalities, as the case may be.

#### NOTES.

The section is based on secs. 8 & 9A, of the Bengal Municipal Act, secs. 4 (5) & (6) of Punjab Act, III of 1911 and sec. 5 of C. P. Act, XVI of 1903.

After consideration of all objections submitted under sec. 5 the Local Government has to notify about the constitution, abolition or alteration of the limits of the Municipality.

"Notification" is not defined in this Act. It is defined in sec. 4 (36) of Bihar & Orissa General Clauses Act (Act I of 1927, B. & O.), and means a notification in the gazette which according to sec. 4 (21) of the Act means the Bihar & Orissa Gazette.

The notification under this section would not only describe the town or a specified area thereof to be included in or withdrawn from the municipality but also describe the various sections of the Act which would be applicable to it (*vide* section 7).

**7. (1) When a municipality is constituted under section 6, those provisions of this Act which are extended to it by the notification shall come into force accordingly, and the remaining provisions shall not apply to the municipality until extended thereto by notification.**  
 Application of Act to a newly constituted municipality.

**(2) The Local Government may make rules for the guidance of the Commissioners and public officers in respect of matters governed by those provisions the operation of which is excluded by sub-section (1).**

## NOTES.

The object of the section is stated thus: "With regard to arrangement the Bengal Act draws a sharp line between regulations and powers which are in force in all municipalities and those which come into force only if specially extended by the Local Government the result is that provisions dealing with the same subject are found scattered in the various parts of the Act causing inconvenience in reference. In the Bill the opposite course is followed. With the exception of a few clauses all its provisions apply *proprio vigore* to every municipality, but power is given to the Local Government to except a municipality from the operation of any provision which appears unsuited to it, either at the time of its creation or if the Commissioners at a meeting make a recommendation in this behalf and to make suitable rules to regulate the matter in respect of which exception has been made. This arrangement enables all the provisions dealing with any given subject to be grouped together. Endeavour has been made further to facilitate reference by placing penalty clauses immediately next to the clause to which they relate, and rule and bye-law-making clauses at the end of the chapter dealing with each subject." Statement of Object and Reasons para 2 (B. & O. Gazette, Extraordinary, November 18th, 1921). This section corresponds to the first part of sec. 8 of the B. M. Act. Under the Bengal Act some provisions (*viz.*, Parts VI, VII, VIII, IX or X) of it were not applicable to every municipality unless they were expressly extended thereto by the Local Government (see sec. 220 B. M. Act). Under the present Act the notification under sec. 6 creating a municipality will contain an enumeration of the provisions of the Act which only were extended to it and those provisions shall come into force immediately and the other provisions shall not apply to it unless they are extended thereto by notification.

See sec. 11 and notes thereto in this connection. The power to except a municipality from the operation of any of the provisions which may appear unsuitable to the locality lies with the Local Government at the earliest stage when the municipality is created but after a municipality is created the Local Government can take action on the recommendation of the Commissioners at a meeting. *Vide* sec. 11.

**Sub-section (2):**—See Statement of Objects and Reasons quoted above.

The Local Government has to make suitable rules to regulate matters in respect of those provisions which have no application to the area.

Application of Act  
and subsidiary orders  
in areas included  
within a municipality.

**8. When any local area is included in a municipality by a notification published under section 6, all the provisions of this Act and of any rules, bye-laws, notifications, resolutions or orders made thereunder, which immediately before such inclusion were in force throughout such municipality, shall be deemed to apply to such area, unless the Local Government in and by the notification otherwise directs.**

#### NOTES.

The section is new and is based on Sec. 5 (4) Punj. Act III of 1911 and C. F. Act XVI of 1908.

Continuance of Act  
and subsidiary orders  
in municipalities formed  
by sub-division.

**9. When any municipality is subdivided into two or more municipalities by a notification published under section 6, then, notwithstanding anything contained in other sections of this Act, all the provisions of this Act and of any rules, bye-laws, notifications, resolutions, or orders made thereunder which, immediately before such subdivision, were in force in any part of the original municipality, shall be deemed to be in force in the same part of the municipality formed by the subdivision, unless the Local Government in and by the notification otherwise directs.**

#### NOTES.

“ Under the present Act it is doubtful whether when a municipality is subdivided, the municipalities created by its subdivision must be taken to be new municipalities to which the provisions of the Act must be extended, and rules and bye-laws must be made by the Commissioners of each separate municipality, nor does the Act declare how far rules and orders are to be in force in an area included in a municipality by notification, or are to cease to be in force when a municipality or a part thereof, is withdrawn from the operation of the Act. These clauses (sec. 8, 9, 10) remove all doubt on the point.” Notes on clauses para 13.

Sec. new and taken from the Bill of 1905. Compare sec. 9 (d) of B. M. Act. All the provisions of this Act and any rules, bye-laws, etc., which were in force before the subdivision will continue to be in force in the area unless the Local Government otherwise directs.

Discontinuance of Act and subsidiary orders in municipalities withdrawn from Act, or in areas excluded.

**10. When the whole area comprised in a municipality is withdrawn from the operation of this Act, or when any part of such area is excluded from the municipality, by a notification published under section 6, this Act and all rules and bye-laws made, orders, directions and notices issued and powers conferred thereunder shall cease to apply to such area or part, as the case may be.**

#### NOTES.

Sec. new, compare sec. 9 (a) of B. M. Act.

When any area or part of it is withdrawn from the operation of this Act, without any further notification all rules, orders, bye-laws made directions and notices issued under the Act shall cease to apply to such area.

Power to exempt municipality from provisions of Act unsuited to it.

**11. (1) If the Commissioners at a meeting represent that any of the provisions of this Act are unsuited to the municipality, the Local Government may, by notification, except the municipality or any part of it from the operation of any such provision, and thereupon the said provision shall not apply to such municipality or part until applied thereto by notification.**

**(2) While such exception as aforesaid remains in force the Local Government may, after considering the recommendations of the Commissioners in this behalf, make rules for the guidance of the Commissioners and public officers in respect of matters excepted from the operation of the said provisions.**

#### NOTES.

“ This clause, borrowed from the Punjab Municipal Act 1911, replace sections 173 to 220 of the Bengal Act. As explained in the Statement of Objects and Reasons all the provisions of the Bill with a few exceptions will apply *proprio vigore* to every municipality. Power is here given, however, to the Local Government in special cases to except on the recommendations of the Commissioners at a meeting any municipality or part of a municipality from the operation of any provisions which are unsuited to it. As municipalities in this Province vary greatly in size and importance, duties and functions imposed on the Commissioners by the Bill may be found too oner-



ous and unnecessary in the use of some of the smaller municipalities, and the procedure too elaborate in others. " Notes on Clauses para 14.

The Local Government may accept or not the recommendations of the Commissioners at a meeting and if it accepts them then by notification it will except the municipality or part of it from the operation of any particular provisions of the Act, and until they are again made applicable to the area these provisions will not apply to those parts.

**Sub-section (2):**—The Local Government is empowered to make rules, regarding the matters which are excluded from operation in the area by sub-sec. (1). These rules will have application only so long as the exclusion subsists but not afterwards.

### THE MUNICIPAL COMMISSIONERS.

**12. There shall be established for each municipality a body of Commissioners, who shall be a body corporate by the name of the Municipal Commissioners of the place by reference to which the municipality is known, having perpetual succession and a common seal, and may by that name sue and be sued.**

Constitution and  
incorporation of Municipal  
Commissioners.

### NOTES.

The section corresponds to sec. 29 of B. M. Act.

This section deals with the corporate position of the Commissioners, their duties and liabilities are defined by sec. 53 to 56.

**Body corporate:**—"A number of individuals spoken of collectively usually as associated for a common purpose joined in a certain cause, united by some common tie or by some occupation"—Imperial Dictionary.

"A corporation is a person which exists in contemplation of law and not physically, it is a legal person with a special name, and composed of such members and endowed with such powers as the law prescribes" J. Pargiter's B. M. Act, p. 46 (2nd edition.)

"The principle characteristics of a corporation are:—

- (1) The individuals composing it constitute one body, that is, it has an existence separate and distinct from the individuals composing it—this is the real characteristic in the eye of law,

(3) It has "perpetual succession" that is, it has an unending existence or rather indefinite duration, irrespective of the life of the particular individuals composing it; it has a continuous legal identity, however the individuals composing it may change.

(8) It has a common name, which expresses that it is a person in the eye of law and declares its continuous legal identity.

(4) It has a common seal which is the corporate signature, the expression of the corporate will and deed; for it speaks and acts only by its common seal, which declares the joint assent of all the members in what is said and done.

(5) It resembles a natural person in many respects as regards rights and obligations and powers." J. Pargiter's B. M. Act, p. 46.

The word "person" according to B and O, General Clauses Act sec. 4 (40) includes any company or association or body of individuals whether incorporated or not; the whole body of the Commissioners will come within the definition of the word "person."

**Perpetual succession:**—"The Corporation has an unending existence or rather indefinite duration, irrespective of the life of particular individuals composing it; it has a continuous legal identity, however, the individuals composing it may change" Brice on *Ultra Vires*. J. Pargiter's Municipal Act, page 46.

The "supersession" of a Municipal Council under sec. 4 B (1) (b) of the Madras Act is only a suspension of such body for a limited period and such supersession is different from and has not the effect of a dissolution under sec. 4 B (1) (a). The "reconstitution" of such a Council under sec. 4 B (3) (b) is the revival of the old corporation and not the creation of a fresh one, and all rights and liabilities of the suspended Council will devolve on the Council so reconstituted as its rightful successor. *Mahamahopadyaya Rangachariar vs. The Municipal Council of Kumbakonam*, 29 Mad. 589.

**Common Seal:**—"It has a common seal, which is the corporate signature, the expression of the corporate will and deed; for it speaks and acts only by its common seal, which declares the joint assent of all the members in what is said and done," Brice on *Ultra Vires* (J. Pargiter's B. M. Act, p. 46).

"The name of the corporation must be engraved on the seal in legible characters both in English and in the vernacular, in order that the acts of the corporation may be intelligible to all." J. Pargiter's B. M. Act, page 47.

"The Rule of English law is that, *prima facie* and for general purposes, a corporation can only contract under seal, because the proper legal mode of authenticating the act of a corporation is by means of its seal. Exceptions, however, have been established in cases where the rule would occasion very great inconvenience, or would tend to defeat the very object for which the corporation was created, such as the doings of acts very frequently recurring or too insignificant to be worth the trouble of affixing the common seal thereto." Rawlinson's Municipal Corporations Acts, p. 74 (J. Pargiter's B. M. Act, page 48).

"A municipal corporation expresses its will as a general rule whenever strangers are concerned by its common seal; and the powers to possess and use a seal is incidental to a corporation. All the acts creating municipal corporations in British India require them to have a common seal. The term common seal seems to imply a single seal and not several seals changed or altered at the will of the body; and the corporation has no common-law-power to change the common seal." Aiyanger's Law of Municipal Corporations in British India, Vol. III, page 7.

A public corporation must comply strictly with the provisions in a statute regarding execution of contracts. When a special mode of execution is prescribed or any particular formality is required to be observed in affixing the corporate seal every deed of the corporation must in order to be completely binding be executed in the manner and with every formality so prescribed. *Ezekiel & Co., versus Annada Charan Sen*, 50 Calcutta 180=36 C.L.J. 109.

Under the Bengal Act, the name of the Municipality was to be engraved in English and also in vernacular but under the present Act no provision is made for insertion of the name in vernacular, hence this is not obligatory. There is another difference in the wording of the two sections. Under the old Act the body of commissioners were to go by the description of "the Chairman of the Municipal Commissioners of" but under the present Act the description of the commissioners are to be "Municipal Commissioners of" and not "the Chairman of the.....".

**Sue and be sued:—**"A corporation may undertake whether by instituting, assisting or defending all legal proceedings which may be necessary for the protection of its constitution, property, franchises, rights, business or affairs: this capacity is simply necessary for the existence of every corporation. The corporation as such alone is competent to deal with what concerns it as a corporation. But a corporation cannot in any way interfere in the legal proceedings which do not involve or question the corporate rights or privileges. A corporation is liable for corporate acts, etc.,

done by agents under its control, but not if it has no control over them. And generally speaking, the engaging in litigation beyond these limits by a corporation is *ultra vires*." Brice on *Ultra Vires* 3rd Edition, pages 443-450 (Justice Pargiter's B. M. Act, page 48).

In a suit by or against the Municipality constituted under the Bombay District Municipal Act (Act No. VI of 1873) every individual commissioner must be regarded as a party within the meaning of sec. 15 of the Bombay Revenue Jurisdiction Act (Act X of 1876) and consequently such a suit cannot be entertained by a Subordinate Judge or a Judge of a Court of Small Causes but can be entertained by the District Judge alone. The Ahmedabad Municipality *vs.* Mahamad Jamal, 3 Bombay 146; see also Gangadhar Shivkaran *vs.* Collector of Ahmednagar and others, 1 Bombay 628 as to the forum.

In a suit brought against among others, the President of a Taluk Board constituted under the Local Boards Act 1884 (Madras) to recover lands on which the Panchayet of the Union erected a public latrine it was pleaded that the suit was wrongly framed as against the above mentioned defendant, held that the suit was not maintainable under the Local Boards Act, (Madras) 1884, sec. 27 on the ground that it was not made against the Taluk Board. It was the Board which was liable to be sued in its corporate capacity and not the President of the Board and it was not a mere error of form. Syed Ameer Saheb and others *vs.* Venkatarama and others, 16 Madras 206. See also in this connection N. W. P. Club through G. B. Goyder *vs.* Sadullah, 20 All. 497, where it has been held that the members of a club collectively could not be sued through their Secretary as their representative. See also Michael *vs.* Briggs and another, 14 Madras 362 where it has been held that a suit to recover the price of goods supplied to a member of a non-proprietory club cannot be brought in the name of the Secretary of the club.

Where in a suit the claim is directed against the municipality as such and no damages are claimed against the Chairman and Vice-chairman and other officers of the municipality for any wrong done by them personally the proper defendant is the Chairman of the Municipality in whose name only the municipality can properly be sued and the addition of the Vice-chairman and other officers of the Municipality as parties is not in order. Tarapada Mazumdar *vs.* Satish Chandra Shaha, 46. Cal. 784. See also in this connection Ezekiel & Co., *vs.* Annada Charan Sen, 50 Calcutta 180=36 C. L. J. 109 (cited ante).

**Criminal responsibility:**—A Municipal corporation is not a public servant within the meaning of sec. 39 of Act IV of 1877 and may therefore be prosecuted under the Penal Code without the preliminary sanction of Government

required by that section. *Empress vers. Corporation of the town of Calcutta*, 3 Cal. 758.

The Inspector of factories having found the latrines of the Hastings mill within the Serampore Municipality in a filthy state instituted a prosecution against the Manager of the mill but the prosecution failed. He then prosecuted as representing the Municipal Commissioners of Serampore the Chairman of the Municipality who on conviction was fined Rs. 200/- for "neglecting to keep the factory free from effluvia from a privy" under the provisions of the Factories Act and section 320 of the B. M. Act. On revision to the High Court it was held that the conviction of the Chairman was unsustainable on the finding that the Municipality and the occupiers of the factory were jointly responsible. *Chairman of Serampore Municipality versus Inspector of factories*, Hoogly, 25 Cal. 454.

**Scope of a corporation's powers:**—The powers of a corporation established for certain specified purposes must depend on what those purposes are, and, except so far as it has express powers given to it, it will have such powers only as are necessary for the purpose of enabling it in a reasonable and proper way to discharge the duties or fulfil the purposes for which it was constituted. *Reg. versus Reed* (1880) 5 Q. B. D. 483, 488.

Municipal commissioners under Act III (B.C.) of 1864 and their servants incur no personal responsibility for what they do so long as they act in their line of duties. But if they do or order to be done that which is not within the scope of their authority, or if they are guilty of negligence or misconduct in doing that which they are empowered to do, then they render themselves liable to an action. There is no special law extending to members of municipalities which protects them so long as they act *bona fide*. *Sundar Lal versus N. B. Baillie*, 24 Weekly Reporter 287.

Where plans for building have been rejected by the Chairman and the General Committee of the Calcutta Municipal Corporation, no suit is maintainable to have the plans approved of or for damages. If the Chairman and the General Committee have acted honestly and within their authority, their decision cannot be reviewed by any Court. If the plans have been rejected *mala fide* the only remedy is by an application under sec. 45 of the Specific Relief Act, or an order to compel the Chairman and the General Committee to hear the matter in the manner provided by law. *Prosad Chunder De vers. Corporation of Calcutta*, 40 Cal. 886.

Where a municipality having proceeded in accordance with secs. 245 & 246 of B. M. Act decide that certain works are necessary, that conclusion in the absence of *mala fides* or fraud or considerations of that nature, cannot

be questioned in a Civil Court. *F. W. Duke vrs. Rameshwar Malia*, 26 Cal. 811.

A suit to set aside an order against a rate assessment and to reduce the tax levied by them under that Act, on the ground that they have tried the appeal in an improper way and have exceeded their powers and acted contrary to the provisions of the Act cannot be maintained in the Civil Court. The decision of the Commissioners in such an appeal is absolutely final. *Manessur Das vrs. The Collector and Municipal Commissioners of Chapra*, 1 Cal. 409.

Number of Commissioners, and of elected and appointed Commissioners.

**13. (1) The Local Government shall by notification fix—**

**(a) the total number of Commissioners,**

**(b) the number of such Commissioners who shall be elected in the prescribed manner, and**

**(c) the number of such Commissioners who shall be appointed,**

**and may, after considering the recommendation, if any, of the Commissioners at a meeting, by notification alter any number so fixed.**

**(2) The total number of Commissioners shall not be less than ten nor more than forty.**

**(3) The number of Commissioners to be elected shall not be less than four-fifths of the total number of Commissioners.**

NOTES.

“ In clause 13 which replaces sections 8, 13 and 14 of the existing Act it has been provided that three-fourths (now four-fifths) of the total number of Commissioners in a Municipality should be elected as against two-thirds at present. The existing Schedule 1 has been abolished as also the restriction about salaried servants of Government and the mode of calculation of one-third or three-fourths. In pursuance of the recommendations of the Decentralisation Commission it is proposed to delegate the power of appointment of Municipal Commissioners to the Commissioner of the Division “ Notes on Clauses para 15.

“ The recommendations of the Decentralisation Commission with regard to the delegation of certain powers, at present exercised by the Local Government to the Commissioner of the Division especially the power to appoint, remove or accept the resignation of the Commissioners and their Chairman have been adopted in the Bill. In view of the wide extent of the

functions entrusted to the Commissioners and to facilitate the speedy transaction of their work provision is made for the appointment of Committees to deal with the various branches of Municipal Administration, while a new departure is made in allowing the Commissioners to appoint persons of either sex, who are not Commissioners but who have special qualifications to be members of any Committee, in order that the Commissioners may have the benefit of their advice. "Statement of Object and Reasons para 3. See sec. 381 for delegation of some of the powers of Local Government to the Commissioners of the Division.

The section corresponds to secs. 13 & 14 of B. M. Act.

The matters referred to in this section have to be notified subsequent to the notification under sec. 6 by a separate notification.

Under the Bengal Act the numbers of the Commissioners were minimum 9 and maximum 30 as against 10 and 40 the numbers fixed by this Act.

**Sub-section (3):**—The original Bill sub-section (3) contained the expression 'three-fourths' instead of 'four-fifths'; the Select Committee suggested the alteration which was accepted. "With a view to securing a large elective representation we have raised the minimum percentage of elected Commissioners from three-fourths to four-fifths. The nominated Commissioners should consist of representatives of special interests as those of the depressed classes, of persons likely to prove useful to the municipal administration and expert advisers." Report of the Select Committee, para. 5.

Under section 14 of B. M. Act two-thirds of the total number of Commissioners used to be elected and one third appointed this section makes the total number of elected Commissioners not to be less than fourth-fifths of the number on any account.

Now in all cases there will be an election and there will be no municipality in which all the Commissioners will be nominated.

Appointment of  
Commissioners.

**14 (1).** The Local Government shall appoint the number of Commissioners fixed in that behalf under clause (a) of sub-section (1) of section 13, and may, if the electorate in any municipality fail within the prescribed time to elect the number of the Commissioners fixed in that behalf under clause (b) of that sub-section, appoint Commissioners to complete such number.

**(2).** The names of the Commissioners elected and appointed shall be published in the Gazette.

## NOTES.

This section corresponds to sec. 16 & 17 of the B. M. Act.

If the electorate or tax-payers who are eligible for voting fail to elect the requisite number of Commissioners within the prescribed time, the Local Government may appoint Commissioners in addition to those appointed under sec. 18 clause (c) to make up the number. The Local Government may also extend the time within which the tax-payers are to elect the requisite number of Commissioners.

The qualifications of the voters are given in section 15. In a newly constituted municipal area the notification under sec. 7 will contain a description of the provisions of the Act which will come into force in the area immediately and unless the notification extends section 15 to the area suitable rules for the making up of the electoral rolls and fixing the franchise qualifications will be made by the Local Government under sec. 7 clause (c).

## ELECTION OF COMMISSIONERS.

Qualifications of  
voters.

**15 (1). Every person shall be entitled to vote at an election of Municipal Commissioners who is registered as a voter.**

**(2). The following persons shall, if not subject to any of the disqualifications specified in section 16, be entitled to be registered as voters:—**

- (a) every male person who has, within twelve months immediately preceding such date as may be fixed in this behalf by the Commissioners, paid in respect of any municipal taxes or fees imposed under this Act an aggregate sum of one and a half rupees or such lesser amount as may be fixed by the Local Government on the recommendation of the Commissioners at a meeting specially convened for the purpose;**
- (b) every male person who for a period of not less than twelve months immediately preceding the date fixed under clause (a) has been resident within the municipality and who has during twelve months immediately preceding such date paid or been assessed to income tax;**
- (c) every person of either sex who for a period of not less than twelve months immediately preceding the date fixed under clause (a) has been resident within the municipality in any holding in respect of which there has been paid as taxes during twelve months immediately preceding such date in**



aggregate amount of one and a half rupees or such lesser amount as may be fixed by the Local Government on the recommendation of the Commissioners at a meeting specially convened for the purpose, and

- (i) is a barrister, or
- (ii) holds the certificate of a pleader, mukhtear, revenue agent or sub-overseer, or
- (iii) holds a license granted by any Government medical school to practise medicine, or
- (iv) is a matriculate of any University, or
- (v) has passed the Sanskrit Title or Madrassa examination held under the authority of Government, or
- (vi) is a retired, pensioned or discharged officer, non-commissioned officer or soldier of His Majesty's regular forces

#### NOTES.

The section corresponds to section 15 of the B. M. Act.

“ The chief changes made in respect of qualifications for voting are, firstly that a voter is required to be a British subject or the subject of a State in India, though exception may be made to this rule with the approval of the Governor General, and secondly that in place of fixing a minimum payment of Rs. 3/- in respect of rates and taxes as a qualification, the Bill gives the Local Government power in clause 24 to fix what the minimum payment shall be in any municipality or class of municipalities. While the fixed minimum of Rs. 3/- is too high in some municipalities, it is too low in others. This proposal had the support of the Committee appointed to discuss the prevention of corruption at municipal elections.” Notes on clauses para. 17.

“ Clause 15.—Has been redrafted with a view to making it more clear and also with a view to secure the following objects:—

- (a) that the ordinary franchise qualification should be Rs. 1/8/0 but that Government should have power to reduce this qualification if the Commissioners so recommend;
- (b) to include matriculates and persons who have passed examinations of similar degree in ancient languages;
- (c) to include educated women;
- (d) to include barrister, etc.” Report of the Select Committee, para 7.

Under the B. M. Act sec. 15 the Local Government was to make rules regarding 5 matters;

- (1) the division of municipality into wards,
- (2) the number of Commissioners to be elected for each ward,
- (3) the qualifications required to entitle persons to vote for Commissioners,
- (4) the mode of election, and
- (5) the authority who shall decide disputes at elections. See J. Pargiter's B. M. Act, p. 29.

The payment of Rs. 3/- on account of rates was the minimum fixed under the B. M. Act, and entitled one to be a voter but under this Act, payment of Rs. 1/8/- as municipal taxes or fees or even of lesser amount if it is so fixed by the Local Government gives one the right to vote. The franchise of voting has been extended to a great extent on the recommendations of the Select Committee.

**Qualifications of electors:**—The qualifications have been fixed under the Act and are no longer regulated by rules of the Local Government.

Sec. 16 provides that for the purposes of registration a voter must be above twenty-one years of age, he must be a British subject and not the subject of any State in India, he must not be of unsound mind nor an undischarged insolvent. This section particularises what such persons must possess in order to be entitled to be registered as voter by imposing qualifications in respect of residence, property and education. The qualifications for a male are payment of certain amount of minimum tax or fee or residence within the municipality and payment of or assessment to income tax during twelve months prior to the time of the election or residence within the municipality in any holding in respect of which certain minimum amount of tax has been paid within a year of the election, and he is a barrister, pleader, etc., i.e., he has at least one of the qualifications mentioned in Sec. 15 (2) (c) cls. (i) to (vi). Persons who are registered are entitled to vote, those who are otherwise qualified but not registered will not be entitled to vote [sub-sec. (1)]. "The qualifications of an elector are thus personal qualifications. He cannot claim for himself the advantage of the payment of rates assessed upon his employer, such as the Government, a company, etc., and he does not acquire the right to vote simply because the rates assessed on his employer's property are paid." J. Pargiter's B. M. Act, p. 32.

**Sub-section (2) cl. (a):**—The section requires that the person himself shall have paid the aggregate amount of Re. 1-8 or less if so fixed by the

Local Government during the year which ends at the time of registration. This qualification is simply a money one representing so much property and nothing more.

**Municipal taxes or fees imposed under this Act.** Under the Bengal Act (sec. 15) the Local Government was to make rules regarding the qualifications of voters and the mode of election, etc. The qualifications mentioned in the section were what ordinarily entitled their possessor to vote but they were not exhaustive for the Explanation at the end of the section gave the Local Government power to increase the body of electors by reducing the minimum qualifying amount of rate of three rupees fixed by the section and by admitting other persons irrespective of these qualifications. The word "rates" was defined in the section which meant (a) the tax on persons and the rate on the value of holdings (b) tax on carriage and horses, (c) water-rate, (d) lighting rate and (e) fee for cleansing of privies and cesspools. The payment of taxes on carriages and horses entitled one to the voting qualification. Fees on the registration of carts were not mentioned as counting towards that qualification. But the Local Government by the Election Rules widened the electorate by admitting other persons irrespective of that proviso. The rules brought in the cartmen who had paid a fee of Rs. 1-8 as fees for the registration of carts for the year. Cartmen were given the right of vote by virtue of the election rules under the Bengal Act. Under the present section all the qualifications of voters have been enumerated in the section and are no longer regulated by rules of the Local Government. The payment of the fees in respect of the registration of carts and the payment of other fees mentioned in cls. (h) (j) & (k) of section 82 entitle the payers to be registered as voters and so in order to include them within the electorate the word "fees" has been added after the words 'municipal taxes or' in the section. The payers of all taxes enumerated in section 82 are as a matter of course entitled to vote.

**Clause (b):**—The person must be a resident within the municipality and must have paid or been assessed to income-tax during a period of 12 months preceding the time of registration of voters. The tax is not assessable upon any person whose income from all sources is less than Rs. 2,000 per year.

**Resident within the municipality:**—This expression has not been defined in the Act but has been defined in the Election rules. See Appedix. Rule 2 cl. (f) lays down that "a person shall be deemed to be resident within the limits of a municipality if he—(1) ordinarily lives within those limits, (2) has his dwelling-house within those limits and occasionally visits it; or

(3) maintains within those limits a dwelling-house ready for occupation in the charge of servants, and occasionally occupies it.

**Explanation:**—A person may be resident within the limits of more than one municipality at the same time."

**Has paid or been assessed:**—A person whose income is below the taxable minimum, but who submits to the levy of the tax, does not thereby acquire the statutory qualification contemplated by sec. 15 of B. M. Act. Similarly a person who is not legally liable to pay Municipal rate but pays it, does not become entitled to become a voter by the mere fact of such payment, unless it is proved to have been made by him as a person legally liable to satisfy the municipal demand. *Narendra Nath Sinha vrs. Nagendra Nath Biswas*, 38. Cal. 501.

When the income of both the father and son as members of a joint Hindu family was jointly assessed for the purpose of income-tax that fact alone entitled both of them to claim to be a voter under cl. (2) sec. 15 of B. M. Act. *Charu Chandra Majumdar vrs. Chairman Faridpur Municipality*, 26 C. W. N. 412=70 I. C. 154.

**Clause (c):**—under this clause the right to franchise has been extended to educated women. See Report of the Select Committee quoted above.

A male or female who is a resident within a municipality in a holding in respect of which the minimum tax fixed has been paid whether by him or her or by someone else for a period of twelve months preceding the time of registration and who possess any of the qualifications in sub-clauses (i) to (vi) is entitled to be registered as a voter. Under the corresponding section 15 (iii) of the B. M. Act, the residence had to be on his own account, and mere residence with someone else was not sufficient.

Under sec. 85 (a) of B. M. Act persons living with a particular individual occupying a holding by reason of some connection with or relation to him such as sons or servants would not be separately assessable by reason of possessing separate incomes. *Ambica Charan Mazumdar vrs. Satish Chandra Sen*, 2 C. W. N. 689.

Father and son occupied the same house, the occupation by the son was not exclusive; he could not be considered to be a person occupying a holding within the meaning of sec. 15 B. M. Act. Hence the son was not qualified under clause (iii). *Charu Chandra Mazumdar vrs. Chairman, Faridpur Municipality*, 26 C. W. N. 412=70 I. C. 154.

**Registration of voters:**—persons entitled to vote must be registered so that persons qualified otherwise but not registered cannot exercise their right of voting.

Unless the name of a candidate is in the voter's list he is not entitled either to vote for election or to stand as a candidate for election. *Nishikanta Choudhury vrs. Gopeswar Chatterji*, 80 C. W. N. 977.

In the case of persons possessing the qualifications referred by the proviso to sec. 15 B. M. Act or by the rules framed under such section entry in the register is to be regard not so much as in itself a qualification but as the evidence upon which the polling officer must proceed. For this purpose, the register is conclusive and if the result is that duly qualified persons finds himself debarred from voting, the conclusion to be drawn is not that the Government has improperly deprived him of his rights but that he himself has failed to furnish the necessary evidence of his title. *Molla Ataul Huq vrs. Chairman of the Maniktolla Municipality*, 24 C. W. N. 969—48 Cal. 378.

A certain man was entered in the register of the voters prepared under rule 4 of B. M. Election Rules, several applications were made under rule 7 for removal of his name and the said voter too made an application under rule 6 for inclusion of his name. All these applications were disposed of by the Chairman, he allowed the application under rule 7 and directed the name to be removed from the register. The voter then applied under rule 10 to the District Magistrate who restored his name in the register, on appeal it was held that the Magistrate had power under rule 29 to decide the point. *Shyam Chand Basak vrs. Nabendra Nath Basak*, 26 C. W. N. 147.

Any one possessing qualifications set out in rule 2 framed under sec. 15 of B. M. Act and duly registered as voter as provided by rules 4 to 12 of the said rules, is eligible under those rules for election as a Commissioner and the fact that such a person is registered as voter under rule 8 as a representative of a corporation instead of being registered in his own capacity does not disqualify him for election. *Rash Behary Ghosal vrs. J. G. Stalkart*, 16 C. W. N. 710.

The right to be present at the recording of votes, not being given by the statute (Act III of 1884) a candidate for election as Commissioner has no such right under natural law. The rule forbidding his presence in that part of the polling station where votes are actually recorded is not inconsistent with the provisions of the Act. The Chairman of the Commissioners of Howrah Municipality *vrs. Haripada Roy Choudhury*, 28 C. W. N. 892=82 I. C. 845=1924 Cal. 1070 (A. I. R.).

There is nothing in the rules framed under the B. M. Act to prevent a candidate withdrawing at any time before the closing of the poll. *Nagendra Nath Addy vrs. The Commissioner of the Presidency Division*, 91 I. C. 722=80 C. W. N. 670.

A rate-payer as such is not entitled to challenge the validity of a municipal election. An election can only be challenged under sec. 42 of the Specific Relief Act, where a right has been denied to a person who is entitled to the same. At an election a mere-rate-payer, if he is not a voter, has no right at all and consequently there can be no question of any denial of any right possessed by him. *Bhuban Mohan Basak vs. Chairman Dacca Municipality*, 31 C. W. N. 926.

**Jurisdiction of Civil Courts.**—In the corresponding section of the B.M. Act (sec. 15 proviso) the jurisdiction of the Civil Courts to interfere in matters relating to election was left unfettered, the omission of such a provision from the present section implies that the matters are to be regulated by election rules framed by the Local Government; if the Local Government makes rules ousting the jurisdiction of the Civil Courts then Civil Courts will have no control over those matters.

Rule 42 of the Election Rules framed under section 19 of this Act by the Local Government runs thus "All disputes arising under these rules shall be decided by the Magistrate and his decision shall be final." Does this rule oust the jurisdiction of the Civil Courts in matters relating to election?

The word "final" in Rule 36 of the Madras Municipal Election Rules (which is a similar rule) has been interpreted in a Madras case thus; an order of a Collector declaring the invalidity of an election of a candidate to a seat in a Municipal Council, passed under Rule 36 of the election rules after enquiry and based on proper grounds (*i.e.*, those set forth in rule 35) and otherwise complying with the requirements of the rules properly framed cannot be questioned in a civil suit; but is conclusive as far as the result of the election is concerned. If such an order had been passed without any enquiry at all or was based on grounds other than those set forth in rule 35 a suit would probably lie to set it aside as *ultra vires*. In other words the candidate adversely affected cannot demand that a Civil Court should hold a fresh enquiry into the merits of the dispute and if it comes to a different decision on these, should treat the Collector's order as a nullity and give a declaration deciding the result and effect of the election. *Nataraja Mudaliar vs. Municipal Council of Nayavaram*, 36 Mad. 121.

The same meaning *i.e.*, conclusive as far as the result of the election is concerned, seems to be attached to the word 'final' in rule 42. Rule 40 of the Election Rules contemplate a civil suit but reading rules 40 & 42 together and from the absence of the proviso leaving the jurisdiction of civil courts in matters of election unfettered (proviso to sec. 15 B. M. Act), the reason-

able interpretation seems to be that if the Magistrate decides the dispute according to the rules framed under sec. 19 then no civil suit will lie, but if he does not decide or decides in contravention of the rules then Civil Courts can interfere.

Disqualifications  
of voters.

**16. A person shall not be entitled to vote at an election of Municipal Commissioners in any municipality, who—**

- (a) has not attained the age of twenty-one years;**
- (b) is not a British subject or the subject of any State in India: Provided that the Local Government may, with the approval of the Government of India, exempt from this disqualification any alien or class of aliens;**
- (c) has been adjudged by a competent court to be of unsound mind; or**
- (d) is an undischarged insolvent.**

#### NOTES.

This clause "introduces into the Bill certain disqualifications which have hitherto been partly laid down in the rules but which should find place in the Act." Notes on Clauses, p. 18.

In the Bill of 1921 (Bihar and Orissa Municipal Bill) in this clause there were two other clauses *viz.*, (e) & (f). Clause (e) ran thus "is in arrears in the payment of any municipal taxes or fees in respect of the first or second quarter of the year immediately preceding the election;" and Clause (f) ran thus "has been sentenced by a Criminal Court to transportation, imprisonment or whipping for a non-bailable offence unless such sentence has been subsequently reversed or remitted or the Local Government has exempted such person from this disqualification."

"In this clause we do not consider that it is necessary to retain the disqualifications given in clauses (e) & (f)." Report of the Select Committee para 8.

The section is new and taken from the U. P. Act II of 1916. Sec. 14 (8). See in this connection sec. 55 corresponding to sec. 57 of the B. M. Act for disqualifications of Commissioners having share or interest in contracts.

Qualifications for  
election as  
Commissioner.

**17. A person shall not be qualified for election to be a Commissioner of a municipality unless he is entitled to vote at the election of Commissioners of**

**such municipality.**

## NOTES.

The section corresponds to sec. 15 of B. M. Act.

To enable a person to stand for election as a Commissioner he must be a registered voter. Unless one is registered he is not entitled to vote, although he may have all the qualifications of a voter. The qualifications necessary for election as a Commissioner are the same as those of an ordinary voter or in other words every registered voter is eligible for election as a Commissioner. The qualifications of a Commissioner are required to exist at the time of election; mere loss of any such qualifications subsequently would not of itself disqualify an elected person from continuing to be a Commissioner. Section 35 prescribes the procedure for removal of Commissioners, and the Local Government can do so only on the grounds mentioned in the section.

Any one possessing qualifications set out in rule 2 framed under sec. 15 of the B. M. Act and duly registered as a voter as provided by rules 4 to 12 of the said rules is eligible under those rules for election as a Commissioner and the fact that such a person is registered as a voter under rule 8 as a representative of a corporation instead of being registered in his own capacity does not disqualify him from election. *Rash Behary Ghosal vs. J. C. Stalkart* 16 C. W. N. 710.

**18. (1) For the purpose of election of Commissioners of any municipality, the Local Government may by notification—**

**(i) divide the municipality into wards, and**

**(ii) determine the number of Commissioners to be elected for each such ward.**

**(2) The Local Government may after considering the recommendation, if any, of the Commissioners at a meeting alter and revise the division into wards and the number of Commissioners to be elected for each ward.**

## NOTES.

In the Bihar and Orissa Municipal Bill of 1921, the clause ran thus:—

“ For the purpose of election of Commissioners the Local Government may, with respect to municipalities generally or to any municipality or class of municipalities, make such rules, consistent with this Act as it may think fit, to regulate and determine—

(1) the division of a municipality into wards and the number of Commissioners to be elected for each such ward;

(2) the qualifications and registration of voters;



(8) with reference to sub-clauses (a) and (c) of section 15 the minimum sums entitling a person to vote;

(4) the dates, times and mode of holding elections: and

(5) any other matter relating to elections in respect of which this Act makes no provision or insufficient provision, and provision is, in the opinion of the Local Government necessary." The Select Committee in their Report para 9 said, "We consider that ordinarily the Municipal Commissioners should subject to the control of Government decide regarding the division of a municipality into wards. We have therefore re-drafted clause 18 (this section) as a separate clause, in place of old clauses 18 (1) which left this matter to be fixed by rules by the Local Government." The section was altered in the Act according to the Report of the Select Committee. Clause 18, sub-clauses (2) to (5) have been formed into a separate section, *vis.*, section 19.

The section corresponds to sec. 15 of B. M. Act.

Whenever any municipality is constituted or abolished or its limits altered the first notification issued by the Local Government is under sec. 6 constituting or abolishing or altering the municipality and the same notification also will enumerate the provisions of the Act that will come into force in the area. The second notification under section 13 fixes the number of total Commissioners in the area and how many of them are to be elected and how many appointed. The third notification under sec. 18 prescribes the division of the municipality into wards and determines the number of Commissioners to be elected for each ward.

*Clause (2):*—See report of the Select Committee quoted ante. Municipal Commissioners are to act subject to the control of the Local Government in the matters regarding the division of a municipality into wards and the number of Commissioners for each ward. The Local Government after considering the recommendations of the Commissioners at a meeting and if necessary after altering, revising or accepting the proposals has to issue the notification under this section

**19. For the purpose of election of Commissioners,**  
Power to make rules to regulate elections. **the Local Government may, with respect to municipalities generally or to any municipality or class of municipalities in particular, make such rules, consistent with this Act, as it may think fit, to regulate and determine—**

(1) the registration of voters;

(2) the dates, times and mode of holding elections;

- (3) the authority which shall decide disputes arising under any rules made under this section; and**
- (4) any other matter relating to elections in respect of which this Act makes no provision or insufficient provision, and provision is, in the opinion of the Local Government, necessary.**

### NOTES.

This section with the clauses was sec. 18 clauses (2) to (5) in the Municipal Bill of 1921 and they were redrafted and formed into a separate section by the recommendations of the Select Committee. See notes to sec. 18 ante.

Clause (2) in the Bill ran thus "the qualifications and the registration of voters" and clause (3) ran thus "with reference to subclause (a) to (c) of sec. 15 the minimum entitling a person to vote" these clauses have been changed according to the recommendations of the Select Committee which was to this effect "As the qualifications have been fixed under the Act it is unnecessary to have this determined by rules; clause (3) of the section is also unnecessary; if a lesser sum than Re. 1-8 is fixed for any municipality it will be fixed by notification and not by rule" Report of the Select Committee para 10.

The Local Government has to frame rules regulating the matters mentioned in clauses 1 to 4 of the section. The rules will provide how the electoral roll will have to be prepared and how election shall be held and who shall decide disputes arising under those rules.

Sub-section (4) is new and is taken from U. P. Act II of 1916, sec. 29 (g), the other provisions in the section are similar to those in sec. 15 B. M. Act This sub-section gives power to the Local Government to make rules in any other matters relating to election in respect of which this Act makes no provisions or insufficient provisions and about which provisions are necessary to be made.

There was a provision in sec. 15 of the B. M. Act (proviso) which laid down that "Provided that nothing in this section nor in any rules made under the authority of this Act shall be deemed to affect the jurisdiction of the Civil Courts." The present Act contains no similar reservations of the powers of the Civil Courts in such matters, this seems to imply that the matters are to be regulated by election rules framed by the Local Government. If the Local Government considers it necessary to take away the jurisdiction of Civil Courts in matters regulating and determining which rules are made under this section it can do so by the rules framed under this section. Dis-

posal of election petitions might be provided for by rules framed under this section. See notes to sec. 15, ante.

**Consistent with this Act:**—The rules framed under this section must be consistent with the various provisions of the Act; rules cannot be framed on matters what are prescribed by sections. The Local Government can make rules as to those matters only which are left to be determined and regulated by it by rules; and these too must be consistent with the provisions and purposes of the Act.

Two things are inconsistent with each other if they cannot stand together. Before one section in an Act can be said to be inconsistent with another they must be mutually contradictory. The Municipal Act generally gives power to the municipality to regulate the erection of all buildings. It also says that the exercise of the power shall be consistent with the provisions of the Act. Then it goes on to provide that the Municipality may order particular things with reference to those buildings. It also gives the Municipality power to make bye-laws "not inconsistent with the Act" relating to Municipal administration. In virtue of this power to make bye-laws the Municipality makes certain rules empowering it to order other things than those specified in the Act itself. The bye-law ordering these other things can be repugnant to or inconsistent with the Act if it alters and thereby contradicts the Act. *Tribhovan Chuni Lal vs. The Ahmedabad Municipality*, 27 Bom. 221 at page 256.

The words used in the Bengal Municipal Act are "not inconsistent with this Act" which were held to mean not inconsistent with the aim scope and object of the Act as shown by its provisions. See *Tribhovan vs. Ahmedabad Municipality* 27 Bom. 221 at page 240 in this connection.

"Consistent with this Act" means consistent with the aim, scope and object of this Act.

A bye-law is a local law and may be supplementary to the general law it is not bad because it deals with something that is not dealt with by the general law. But it must not alter the general by making that lawful which the general law makes unlawful or that unlawful which the general law makes lawful. Per Channell, J. in *White vs. Morley* 2 Q. B. 34.

CHAIRMAN, VICE-CHAIRMAN AND PRESIDENT.

Election of  
Chairman.

**20. (1) Save as is otherwise provided in this Act, the Commissioners at a meeting shall elect by name one of their number or some person qualified to be of their number to be Chairman; provided that no salaried servant of Government shall vote in the election or be eligible for election.**

**(2) Such election shall take place within twenty-one days from the date of the publication of the names of the Commissioners in the Gazette under section 14 (2), or in the case of a vacancy due to any other cause than the expiry of the term of office of the Chairman, within twenty-one days from the date of occurrence of the vacancy.**

#### NOTES.

The Municipal Bill of 1921 (B. & O.) clause 19 (corresponding to the present section 20) contained 3 other clauses which ran thus:—

(3) "The Commissioners at a meeting may pass a resolution requesting the Commissioners of the Division to appoint a Chairman; provided that no salaried servant of Government shall vote on any such resolution.

(4) The election of a Chairman under sub-sections (1) & (2) shall be subject to the approval of the Commissioner of the Division.

(5) If the Commissioner of the Division disapproves of any resolution passed by the Commissioners for the election of a Chairman he shall refer the matter to the Local Government."

"In accordance with the principle laid down by the Government of India in paragraph 7 of their Resolution No. 41 dated 16th May, 1918 on Local Self-Government, all Municipalities have been given the power to elect their Chairman. It is optional with them to elect an official or to request the Commissioners of the Division to appoint one in both cases Commissioners who are salaried servants of Government are debarred from voting."

"It is essential that the Chairman of a Municipality should be elected without delay in order that there may be no break in the continuity of administration. Experience has shown that when there are two parties amongst the Commissioners, who are unable to agree as to the person who should preside at the meeting held to make the election of a Chairman and Vice-Chairman, a deadlock occurs and the election is greatly delayed. It is, therefore proposed to fix a time-limit of fourteen days (now 21 days) for the election, failing which the Commissioner of the Division will appoint a Chairman. The existing Schedule II has been omitted "Notes on Clauses para 19.

Clauses 3 to 5 of the Bill were omitted on the recommendations of the Select Committee which were to this effect, "We consider that with a view to the development of local self-government salaried servants of Government should be debarred from holding office as Chairman or Vice-Chairman. Ordinarily the Chairman should be a Commissioner but to meet the possibility of there being no Commissioner willing to accept the post we have made it possible for the Commissioners to elect a person who is not a Com-

missioner but who is qualified to be a Commissioner and have deleted the clauses empowering the Commissioners to ask the Commissioner of the Division to make the appointment and requiring the approval of the Commissioner to the election. We have extended the period within which an election should take place from fourteen to twenty-one days. It is desirable that all the Municipal Commissioners should have full notice of such meetings" Report of the Select Committee para. 11. The section correspond to sec. 28 (2) of B. M. Act.

All municipalities have been given the power to elect their own Chairman from amongst the Commissioners elected or nominated but if from some reason no Commissioner is willing to act as such, the Commissioners may elect a person as chairman who although not a Commissioner is qualified to be a Commissioner. But a Vice-Chairman must be a Commissioner he cannot be an outsider.

**Salaried servants of Government:**—defined in sec. 3 (26) means a whole time officer of Government who receives his salary direct from Government. Salaried servants of Government cannot vote in the election of a Chairman nor are they eligible for election; but they have votes in the election of vice-chairman; although not eligible for election. The period within which the election must take place is 21 days from the date of the publication of the names of the Commissioners or in the case of filling up a vacancy, from the date when the vacancy occurred.

All municipal Commissioners must have notice of the meeting for the election of a Chairman. About "notice" see notes to sec. 43 & 57.

Cases in which the Local Government may appoint a Chairman.

**21. In any municipality in which section 20 is not in force, or in which the Commissioners have failed to elect a Chairman within the aforesaid period of twenty-one days, the Local Government may appoint a Chairman.**

#### NOTES.

"In consonance with the general principle that appointments to local self-governing bodies should be made by the Government in the Ministry of Local Self-Government we have given the power of appointment under this clause to the Local Government." Report of the Select Committee para 12.

The Local Government may delegate (under sec. 381) subject to any conditions or reservations its power to appoint a Chairman to the Commissioner of the Division, or to any other authority e.g. the District Magistrate, Sub-Divisional Magistrate.

In municipalities in which sec. 20 has not been extended or in which although extended the Commissioners fail to elect a Chairman within the prescribed period of 21 days after the publication of the name of the Commissioners in the Gazette the Local Government has to elect a Chairman.

See secs. 6, 7, 8 and 11 and notes thereto in this connection. When a new municipality is created the notification under sec. 6 contains a description of the provisions of the Act which will apply to it and when any new area is included within a municipality the Local Government may exempt the area from the operation of certain provisions of the Act and under sec. 11 the Commissioners at a meeting may represent as to what provisions of the Act are unsuited to the municipality and the Local Government may make the sought for exemptions. If for any of these reasons sec. 20 has not been made applicable or operation of the section has been withdrawn from the area then the Local Government has to elect a Chairman under this section.

**22. Notwithstanding anything contained in sections 13 and 14 every Chairman elected or appointed under section 20 or 21, if not already a Commissioner of the municipality of which he has been elected or appointed Chairman, shall, from the date of his election or appointment during the term of his office, enjoy all the rights and privileges, and be subject to all the liabilities and disabilities, of a Commissioner of the municipality to which such election or appointment relates.**

Status of elected or appointed chairman who is not a Commissioner of the municipality

## NOTES.

The section cor. to sec. 24 of B. M. Act.

If a person who is fit to be elected as a Commissioner but who has not been elected as such is elected as a Chairman under sec. 20, or if any Chairman is appointed by the Local Government under sec. 21, this section vests in him all the rights and privileges and subjects him to all the liabilities and disabilities of a municipal Commissioner. This section is necessary as there are contingencies contemplated in secs. 20 and 21, viz., the election of a person otherwise duly qualified but not elected as a Commissioner or the appointment of one as Chairman by the Local Government.

Election of Vice-Chairman.

**23. The Commissioners at a meeting shall elect one of their own number not being a salaried servant of Government to be a Vice-Chairman.**

## NOTES.

The section cor. to sec. 25 of B. M. Act.

Vice-Chairmanship is always elective. Rules regarding the election of a Vice-Chairman are given in the Model Rules for Municipalities, see Appendix.

**Salaried servants of Government:**—see def. in sec. 3 (26). They cannot vote in an election for Chairmanship nor are they eligible for election. But in an election for Vice-Chairmanship they can vote although they cannot stand as candidates. The appointment of a Vice-Chairman is not so important for the municipal administration as the appointment of a Chairman. Under this section if any Commissioners are unwilling to act as Vice-Chairman, no authority is given to the Commissioners to appoint an outsider, nor is there any time limit within which the election is to be made. Sec. 32 only prescribes that after the election of the new Commissioners they in a meeting shall immediately proceed to elect a Chairman, Vice-Chairman and President. If the Commissioners fail to elect a Chairman from the elected Commissioners the Local Government steps in and appoints a Chairman but no such power is given in the case of a Vice-Chairman. They are always to be elected if no Vice-Chairman is elected which can seldom happen then the municipal administration is to go on without such an officer, but the Chairman with the approval of the Commissioners under sec. 25 may delegate to any Commissioner all or any of his duties.

**24. The Chairman shall, for the transaction of the business connected with this Act, or for the purpose of making any order authorized thereby, exercise all the powers vested by this Act in the Commissioners:**

Powers of Chairman .

**Provided that the Chairman shall not act in opposition to, or in contravention of, any resolution of the Commissioners at a meeting, or exercise any power which is directed to be exercised by the Commissioners at a meeting.**

## NOTES.

The section cor. to sec. 44 of B. M. Act.

**Scope of the Section:**—“This section has a two-fold aspect, first as regards the Commissioners secondly as regards the Chairman.

*As regards the Commissioners.* This section relieves them of the duty of themselves dealing with every single matter, however, formal or unimportant that may arise in the administration. It is impossible for them to

meet and deliberate and pass resolutions on every matter. Their meetings are subject to rules regarding convening, notices to members and a quorum and so presupposes a machinery which often means considerable delay, and it could not be applied as a preliminary to each and every matter especially prosecutions for municipal offences. The only way in which they can deal with such matters is by having some person who can deal with a multitude of ordinary business with authority on their behalf. This authority is given to the Chairman. *Powell vrs. Municipal Board of Mussoorie*, 22 All. 128."

*As regards the Chairman.* The section enables him to exercise all the powers vested in the Commissioners except those expressly excluded by the Proviso. These powers are noticed under the various sections that confer them and are express statutory powers. Besides such power "governing bodies have by implication only such powers as are necessary for the corporate enterprise or the due performance of the duties imposed on the corporation." The Chairman can apparently exercise such implied power but one principle will hold good, viz., that whatever is beyond the power of the municipal corporation is beyond his power." *J. Pargiter's B. M. Act*, page 76.

**Making any order authorized thereby.** The orders which a Chairman is authorized under the Act to pass are orders sanctioning prosecutions and delegating certain of his powers to the Vice-Chairman or other Commissioners *e.g.*, authorizing a Commissioner under sec. 285 to inspect a market, shops, etc., and inspect any article of food and destroy unwholesome articles of food as ghee, etc.

In *Powell vrs Municipal Board of Mussoorie*, 22 All. 128, it was held that the Municipal Board had power to delegate generally their authority to make complaints in respect of municipal offences and this general delegation included not merely the giving of authority to do the formal act of presenting a complaint to a Court but the exercise of discretion as to whether in any given case a complaint shall or shall not be made.

**Proviso.** "The Chairman is an agent of the municipal corporation though no doubt an agent with high position and great general powers. He cannot override the corporate body; and it is an established rule that "governing bodies may not delegate authority which it is intended they shall exercise personally." *J. Pargiter's B. M. Act*, p. 76.

The Chairman is bound not to act in opposition to or in contravention of any resolution of the Commissioners at a meeting nor can he exercise any of the functions which are directed to be done by the Commissioners at a meeting and these are the two limitations put on the Chairman's powers under the Act.



The grant of a lease by a Chairman, without a resolution of the Commissioners at a meeting is void. *Akshay Kumar Chand vs. Commissioners of Bogra Municipality*, 37 C.L.J. 589.

The Chairman has no power to sell or lease a land belonging to the municipality. Only the Commissioners at a meeting can do so. *Jagannath Saha vs. Chairman of Berhampur Municipality*, 9 C.L.J. 286. The Chairman has no power to purchase lands. *Chairman of South Barrackpur Municipality vs. Amulya Nath Chatterji*, 34 Cal. 1030. See also 1923 Cal. 561 (A.I.R.) in this connection.

Delegation of duties and powers to Vice-Chairman or other Commissioner.

**25. The Chairman may, with the approval of the Commissioners at a meeting, delegate to the Vice-Chairman or to any other Commissioner all or any of the duties and powers of a Chairman as defined in this Act, and may at any time with the like approval withdraw or modify the same :**

**Provided that nothing done by the Vice-Chairman which might have been done under the authority of a delegation from the Chairman, shall be invalid for want of or defect in such delegation if it be done with the express or implied consent of the Chairman and subsequently approved by the Commissioners at a meeting.**

#### NOTES.

"We have drafted this clause with a view to securing that (a) delegation made by the Chairman must be approved by the Commissioners at a meeting, (b) delegation may be made to individual Commissioners and not only to a Vice-Chairman. We realise that the work devolving on a Vice-Chairman or Chairman is often arduous and we trust that by this division of labour municipal administration will become more efficient and individual Commissioners will take up any special branch of the administration in which they feel an interest." Report of the Select Committee, para 13.

The section cor. to sec. 45 of B. M. Act, which ran thus :—"The Chairman may by a written order delegate to the Vice-Chairman all or any of the duties or powers of a Chairman as defined in this Act, subject to such restrictions as may seem fit to him, and may at any time by a written order withdraw or modify the same :

**Provided that nothing done by the Vice-Chairman which might have been done under the authority of a written order from the Chair-**

man, shall be invalid for want of, or defect of such written order, if it be done with the express or implied consent of the Chairman previously or subsequently obtained." Under the old section the delegation could be done by the Chairman by a written order and only to the Vice-Chairman and so also the withdrawal; but by the present section the delegation made by the Chairman must be approved by the Commissioners at a meeting and the delegation may be made to individual Commissioners and not only to the Vice-Chairman and so also the withdrawal or modifications will have to be approved by the Commissioners at a meeting and without such approval the Chairman cannot delegate or withdraw any powers. There is now no necessity of a "written order" as the powers and duties which are delegated by the Chairman are done with the approval of the Commissioners at a meeting and they will as a matter of course be recorded in the minutes of the municipality. The Commissioners will also have some control over the Chairman by this procedure of subjecting the Chairman's intention to their approval.

The existence of a resolution and its purport must be proved by the production of the proceedings. A legitimate way of proving the proceedings of a municipality in British India is by a copy of such proceedings certified by the legal keeper thereof or by a printed book purporting to be published by the authority of such body as laid down in cl. (5), sec. 78 of the Evidence Act. Presumption that official acts have been regularly performed cannot supply the deficiency in the proof. *Syed Mokram Ali vs. Cuttack Municipality*, 17 C.W.N. 531.

**Powers which can be delegated.** The Chairman can delegate his powers as defined by the Act. He cannot delegate his powers under the Lincensed Warehouse Firebrigade Act. The Act provides for the delegation of powers of the Chairman to a Special Committee. Superintendent and Remembrancer of Legal Affairs *vs.* J. S. Mull, 25 C.W.N. 960=34 C.L.J. 203. The Chairman has power to delegate his powers not only under the Act but under the rules as well, the rules forming an integral part of the Act. *Bhuban Mohan Basak vs. Chairman, Dacca Municipality*, 31 C.W.N. 926.

**proviso.** Under the B. M. Act the delegation had to be made by a written order. Verbal consent was not what the law required.

The delegation of powers by a Chairman to a Vice-Chairman under sec. 45 of B. M. Act does not terminate on the officer delegating ceasing to hold office, but continues until it is withdrawn by his successor. A sanction therefore granted for a prosecution under the Act by a Vice-Chairman by virtue of

a delegation granted by a previous Chairman which has not been expressly withdrawn is valid and operative. *Baldeo Lal vrs. Emperor through Gaya Municipality*, 88 I. C. 805.

The proviso to sec. 45 cannot be considered as altogether overriding the body of the section and relates to specific acts in which an express or implied consent may have been given or held to have been given. It cannot be held to apply to a general authority, verbally given by the Chairman to a Vice-Chairman to institute prosecutions under the Act, as such power can only under the body of the section be delegated by a written order. *Kherode Prasad Paul vrs. Chairman of Howrah Municipality*, 20 Cal. 448.

A notice issued by the Vice-Chairman of a Municipality under sec. 210 of the Act, in the absence of proof of delegation of powers under sec. 45 of the Act is invalid. When an objection is raised that a particular person who does an official act has no powers to do it, it is for that person to prove that he has such power. No mere presumption under sec. 114 of the Evidence Act that official acts have been rightly done, can dispose of the objection. *Harendra Nath Mukherji vrs. The Chairman of the Birnagar Municipality*, 1 C.L.J. 51.

The accused was prosecuted under sec. 271 of B. M. Act for disobeying a requisition under sec. 230 which was issued by the authority of the Vice-Chairman. The report of the offence was made by the Outdoor Inspector and it was submitted to the District Magistrate by the Chairman with a recommendation to prosecute the accused. The document bore a stamp of eight annas and the Inspector appeared before the Magistrate and was examined as the complainant. It further appeared that the notice against the accused was issued on the authority of the Vice-Chairman. There was no order of delegation of duties or powers by the Chairman to the Vice-Chairman which could cover the order made by the Vice-Chairman held that in the present case the order of the Chairman was an order or consent in writing by the Chairman within the meaning of sec. 353 and was sufficient. It being clear that the act of the Vice-Chairman was done with the express consent of the Chairman subsequently obtained, the case was covered by the proviso to sec 45. *Chairman of Hughly-Chinsura Municipality vrs. Krista Lall Mullick*, 20 C.W.N. 824. (See also in the matter of the Chairman of the Puri Municipality 1 C.W.N. cxxiv.) Under the proviso to the present section the express or implied consent of the Chairman will not be enough. It will have to be shown that the delegation of power had been approved by the Commissioners at a meeting.

Duties of Vice-Chairman.

**26. A Vice-Chairman shall—**

**(a) during the vacancy in the office of Chairman or the incapacity or temporary absence of the Chairman, perform any of the duties and, when occasion arises, exercise any of the powers of the Chairman; and**

**(b) at any time perform any duty and exercise, when occasion arises, any power delegated to him by the Chairman under section 25.**

NOTES.

In the original Bill of 1921 there was another sub-clause (a) and the present sub-clauses were sub-clauses (b) and (c). Sub-clause (a) ran thus: "In the absence of the Chairman from a meeting of the Commissioners and unless prevented by reasonable cause, preside, regulate the conduct of business and maintain and enforce order, at a meeting."

"Practically the Vice-Chairman does at present carry on the administration during the absence of the Chairman or when there is vacancy in the office of the Chairman, but his legal right should be distinctly recognised." Notes on Clauses, para 20.

"In view of the insertion of clause 28 (election of President) and of consequent modifications made in clause 45 (sec. 45) old clause 25 (a) becomes unnecessary." Report of the Select Committee, para 14.

The section is new and taken from the U. P. Act II of 1916, sec. 55. Under the old Act the Vice-Chairman practically used to carry on the work of the Chairman during his absence and this section gives the former the legal right to act for the latter.

Grant of leave to Chairman and Vice-Chairman.

**27. The Commissioners at a meeting may grant leave of absence to their Chairman or Vice-Chairman for any period not exceeding three months in**

**any one year.**

NOTES.

The section cor. to sec. 26 B of B. M. Act which was inserted into the B. M. Act by Act IV of 1894 and it was introduced to remedy an omission that had caused inconvenience. Permission to absent himself from 4 consecutive municipal meetings may be granted to a Commissioner by the Commissioners at a meeting but no period is fixed for which leave can be granted. Sec. 85 (2) (b).

Election of President.

**28. The Commissioners at a meeting shall elect one of their own number to be President; provided that**

**the Local Government may by notification exempt any municipality from the operation of this section.**

### NOTES.

The section is new. There was no corresponding clause in the Bill of 1921 and its introduction was suggested by the members of the Select Committee. "It has been represented that it is not desirable that the Chairman as the Chief Executive Officer of the Municipality should preside at meetings but that a separate president should be elected by the Commissioners from among their own number whose sole duty should be to preside at meetings. It is recognised, however, that this appointment may detract from the prestige of the office of Chairman and make people unwilling to undertake it. As this suggestion is new, we have consulted the municipalities of the Province. Of the replies received eight are in favour of the proposal and the remainder against it. We are not, however, convinced that the suggestion is inappropriate and we have therefore embodied it in the Bill but have given power to Local Government to exempt municipalities from the operation of this section." Report of the Select Committee, para 15.

### TENURE OF OFFICE, RESIGNATION AND REMOVAL.

#### **29. (1) Save as otherwise provided in this Act—**

Tenure of office of  
Chairman, Vice-Chairman,  
President and  
Commissioners.

**(a) an elected Commissioner shall hold office for three years commencing from the date of the general election of Commissioners in the municipality;**

**(b) a Commissioner appointed under section 14 shall hold office for three years or for such shorter period as may be specified in the order appointing him, and such appointment shall be deemed to have been made on the date of the aforesaid general election;**

**(c) a Chairman, whether elected or appointed, a Vice-Chairman and a President, if any, shall hold office for three years from the date of his election or appointment, as the case may be, or for the residue of the term of office of the Commissioners whichever may be less.**

**(2) The above-mentioned term shall be held to include any period which may elapse between its expiry and the date of the first meeting of the body of Commissioners newly elected and appointed.**

**(3) A person ceasing to be Commissioner or to be Chairman, Vice-Chairman or President by reason of the expiry of his term of office shall, if otherwise qualified, be eligible for re-election or re-appointment.**

## NOTES.

Sub-section (1) (a) corresponds to sec. 21 of B. M. Act; sub-sec. (b) corresponds to secs. 14 & 21 of B. M. Act; sub-section (1) (c) and sub-sec. (3) correspond to sections 24 & 25; sub-section (2) corresponds to sec. 26 of B. M. Act.

The three years mentioned includes the period which may elapse between the expiry of the three years and the date of the first meeting of the body of newly elected and appointed Commissioners.

Sub-section (2). Under this sub-section the term of office of three years of the Commissioners, the Chairman, the Vice-Chairman and the President, if any, extends up to the first effective meeting of the new batch of Commissioners.

Filling of vacancies  
and tenure of office of  
person filling vacancy.

**30 (1) If any Commissioner, Chairman, Vice-Chairman or President is, by reason of his death, resignation or removal or otherwise, unable to complete his full term of office, or if a Chairman or Vice-Chairman avails himself of leave granted under section 27, the vacancy so caused shall be filled by the election or appointment, as the case may be, of another person; and the person so elected or appointed shall fill such vacancy for the unexpired remainder of the term for which such Commissioner, Chairman, Vice-Chairman or President would otherwise have continued in office or during his absence on leave, as the case may be.**

**(2) The provisions of sub-sections (1) and (2) of section 20 shall apply to the election of a Chairman under this section.**

## NOTES.

Sub-section (1) cor. to sec. 27 and sub-section (2) cor. to sec. 59 (a) of B. M. Act.

**Filling up vacancy by "by-election."** An election under this section is called a by-election. See Rule 2 (d) Election Rules (Appd.). When a Chairman or Vice-Chairman dies, resigns or is removed or takes leave under sec. 27, the vacancy is to be filled up by election (under sec. 20) or appointment (under sec. 21) but the election of a Commissioner will only take place when the latter dies, resigns or is removed and not when he takes leave for a permissible period, [Sec. 23, cl. (5) and sec. 35, cl. 2 (b)], nor when the President is temporarily absent (sec. 45) in which case the Commissioners shall choose one out of their number to preside.

The by-election is also subject to the provisions of sec. 20, cl. (1) and (2) one of the elected commissioners or an outsider duly qualified to be a Commissioner has to be elected and the election is to be held within 21 days of the occurrence of the vacancy.

**31. If a Chairman or Commissioner is appointed by official designation, the person for the time being holding the office shall be a Chairman or a Commissioner, as the case may be.**

Ex-officio appointment.

#### NOTES.

The sec. cor. to sec. 25 A of B. M. Act.

"Where such an appointment is made by official designation it is unnecessary, when a change in the personnel occurs, that there should be any personal resignation. The officer described by the official designation holds the appointment irrespective of changes in the personnel till the body of the Commissioners is reconstituted. See Order (Munl.) No. 8339M. Dated 20th Dec. 1901." J. Pargiter's B. M. Act, p. 42.

The appointment of Chairman by an official designation can only occur when the Local Government appoints one under sec. 21.

**32. (1) Notwithstanding anything contained in section 20, the Chairman, the Vice-Chairman and the President, if any, of a municipality shall be deemed to vacate office at the meeting of the Commissioners newly elected and appointed held under the provisions of sub-section (2) of section 20.**

Vacation of office of Chairman, Vice-Chairman and President after general election.

**(2) The Commissioners at such meeting shall immediately proceed—**

- (a) to elect a Chairman,**
- (b) to elect a Vice-Chairman, and**
- (c) to elect a President:**

**Provided that if in any municipality section 20 is not in force, or if the Commissioners fail to elect a Chairman, the Chairman shall continue in office until a new Chairman is appointed.**

#### NOTES.

The sec. corresponds to sec. 26A of B. M. Act.

Under the B. M. Act the Commissioners, Chairman and Vice-Chairman remain in office till the first meeting of the new Commissioners at which a quorum is present. This procedure has been kept intact in this Act. See

SEC. 29

sec. 29(2) which enables, the body of Commissioners whose term of office is about to expire to continue in office till the first effective meeting of the new Commissioners, and the Chairman, the Vice-Chairman and the President to carry on the duties until the first effective meeting is convened to elect their successors. Sec. 29(1) only lays down that the Commissioners, elected or appointed and the Chairman, the Vice-Chairman and the President, if any, will hold office for three years and sub-section (2) extends the period in case the term of three years expire before the first meeting of the new body of Commissioners for a time up to the first meeting of the body of Commissioners newly appointed and elected.

Section 29(1) and (2) do not lay down any other period. The use of the phrase "Notwithstanding anything contained in sec. 29" at the beginning of the section does not seem to be a happy one. The proper wording would have been "The Commissioners, the Chairman, the Vice-Chairman and the President, if any, of a municipality shall....."

At the first meeting of the new body of Commissioners elected and appointed (if there is a quorum) the old Commissioners, Chairman, Vice-Chairman and the President, if any, vacate their offices and then the new body of Commissioners immediately elect a Chairman, Vice-Chairman and President and it is only if they fail to elect a Chairman, the old Chairman continues in office until a new Chairman is appointed.

Resignation of Chairman,  
Vice-Chairman,  
President or Commissioner.

**33. (1) An appointed Chairman of a municipality may resign by notifying in writing his intention to do so to the Local Government, and on such resignation being accepted shall be deemed to have vacated his office.**

**(2) An elected Chairman may resign by laying notice in writing of his intention to do so before the Commissioners at a meeting.**

**(3) A Vice-Chairman, a President or a Commissioner may resign by notifying his intention to do so to the Chairman who shall forthwith lay such notice before the Commissioners at a meeting.**

**(4) On a resignation under sub-section (2) or (3) being accepted by the Commissioners at a meeting, the Chairman, Vice-Chairman, President or Commissioner, as the case may be, shall be deemed to have vacated his office.**

**(5) When a salaried servant of Government who is a Commissioner is granted leave for a period exceeding three months, or is transferred**



from the district in which the municipality is situated, he shall be deemed to have vacated his office of Commissioner on the date of his departure on leave or transfer.

#### NOTES.

The section cor. to sec. 27 A of B. M. Act.

**Sub-section (1):**—The case of an appointed Chairman can only occur under sec. 21 and as the Government appoints him the resignation of such an officer is subject to its approval and acceptance.

**Sub-section (2):**—The elected Chairman is under sec. 20 elected by the Commissioners at a meeting and so a power to accept the resignation is given to them. "If the Commissioners at a meeting have power to accept the resignation of an elected Chairman, they can at once proceed to elect a new Chairman and time is saved." Notes on Clauses, p. 21.

The notice of intention to resign must be in writing in the case of the Chairman and it has to be accepted before he ceases to hold office. Before acceptance the notice may be withdrawn.

**Sub-section (3):**—A Vice-Chairman, President or a Commissioner (whether elected or appointed) may resign by notifying his intention to the Chairman who is the agent of the Commissioners and who will lay the notice before the Commissioners at a meeting. The notice of intention to resign need not be in writing; this sub-section contemplates verbal notice.

**Sub-section (4):**—On the resignation being accepted the Vice-Chairman, President or Commissioner cease to hold office. The resignation is subject to acceptance and it follows that before the acceptance in a meeting the notice to resign may be withdrawn.

**Sub-section (5):**—When a Commissioner who is a salaried servant of Government takes leave for more than three months or is transferred he shall be deemed to have vacated his seat from the date of departure on leave or transfer. It generally happens that an officer who takes longer leave than 3 months is transferred from the place, so this has been provided by this sub-section.

Removal of Chairman and Vice-Chairman.

**34. A Chairman appointed under section 21 or elected under section 20 or 30 or a Vice-Chairman may at any time be removed from his office by a resolution of the Commissioners in favour of which not less than two-thirds of the whole number of the Commissioners have given their votes at a meeting specially convened for the purpose.**

NOTES.

The section cor. to sec. 23 (3) & 24 of B. M. Act.

The conditions of removal of a Chairman whether appointed or elected and a Vice-Chairman are the same and they can be removed by the Commissioners themselves by a resolution supported by at least two-thirds of the whole number of Commissioners and passed at a meeting specially convened for the purpose. Even in the case of an appointed Chairman no approval or acceptance of the resolution by the Local Government is necessary.

**35. (1) The Local Government may remove any Commissioner elected or appointed under this Act, if such Commissioner is guilty of misconduct in the discharge of his duties, or if he is convicted of any such offence, or subjected by a criminal court to any such order, as implies moral turpitude which in the opinion of the Local Government unfits him to be a Commissioner and if a resolution recommending his removal has been supported by not less than two-thirds of the whole number of Commissioners at a meeting specially convened for the purpose.**

**(2) The Local Government may remove any Commissioner—**

- (a) if he refuses to act or becomes incapable of acting, or is declared insolvent; or**
- (b) if he absents himself from four consecutive meetings of the Commissioners without having previously obtained permission from the Commissioners at a meeting; or**
- (c) if, in the judgment of the Local Government to be recorded in writing, he has become disqualified to continue in office under section 55; or**
- (d) if he, being a legal practitioner, acts or appears in any suit or other proceeding on behalf of any other person against the Commissioners, or acts or appears on behalf of any other person in any criminal proceeding instituted by or on behalf of the Commissioners.**

**(3) If three-fourths of the registered electors of any ward submit a representation to the Local Government alleging that any Commissioner representing the ward is unfit to continue in office, the Local Government, after making such enquiry as it may think fit, may remove the Commissioner; provided that no Commissioner shall be so removed unless he has held office for a period of one year from the date of his election.**

**(4) All acts and proceedings of any Commissioner removed under this section shall, if done previously to such removal, be valid and effectual to all intents and purposes.**

#### NOTES.

"We have carefully considered this clause and have amplified sub-clause (1) which refers to removal on the recommendation of the Commissioners so as to include not only persons who are guilty of misconduct in the discharge of their duties but also persons who are convicted of certain criminal offences. We consider that it will encourage the growth of civic spirit if the decision in these cases vests with the Municipal Commissioners who should be trusted to see that undesirable persons do not continue as Municipal Commissioners. On the other hand there are some cases in which the Local Government should *suo motu* remove a Commissioner on the report of the Chairman, *e.g.*, neglect of duties or repeated absences. We have also included as clause (3) a provision that electors themselves should have the right to move Government to remove an unsatisfactory Commissioner, a proposal made by the conference of representatives of local bodies" Report of the Select Committee, para 17.

In the Bill of 1921 in clauses (1) and (2) for the words "Local Government" the words "the Commissioner of the Division" were used. See Report of the Select Committee, para 11 and 12 quoted in the note to sec. 20 & 21.

A Commissioner may be removed in these ways firstly:—by the Commissioners recommending to the Local Government by a resolution supporting the removal by at least two-thirds of the whole number of Commissioners passed in a meeting specially convened for the purpose. The Commissioners can take this course if in their opinion the Commissioner whether appointed or elected is guilty of misconduct in the discharge of his duties or is convicted of certain offences which implies moral turpitude or is subjected by a criminal court to any such order. What would amount to misconduct in the discharge of duties will have to be considered in each case on the merits by the Local Government and the final decision rests with it, the Commissioners simply initiate the proceeding, record a resolution and forward it to the Local Government with whom rests the final decision.

Secondly:—The Local Government *suo motu* on receipt of a report from the Chairman may remove a Commissioner if the latter refuses to act or is declared an insolvent or absents from four consecutive municipal meetings without permission, or acquires an interest in any contract, etc., without the sanction of the Local Government, or being a legal practitioner accepts any brief for any person against the Municipality.

**Thirdly:—**If the electors themselves move the Local Government to remove an unsatisfactory Commissioner. This has to be done by a representation by three-fourths of the registered electors of the ward which the Commissioners represent alleging that the latter is unfit to continue in office. The Local Government after making such inquiries as it thinks fit may act on the representation and remove the Commissioner; but this power is not to be exercised until the Commissioner has been in office for a year from the date of his election.

**Sub-section (1):—**This sub-section cor. to sec. 19 of B. M. Act; the words in the B. M. Act are "if such Commissioner shall have been guilty of misconduct in the discharge of his duties or of any disgraceful conduct."

What would be misconduct in the discharge of duties and what would be disgraceful conduct are questions which have to be considered by the Commissioners first and then after the resolution by the Local Government.

**Procedure of the Commissioners—**"The misconduct or disgraceful conduct must be proved before any action can be taken under this section. Mere belief, even belief in good faith, that a Commissioner has misconducted himself, is not enough. But before a recommendation is made or an order passed, it would be proper to allow the Commissioner an opportunity of defending himself; the omission to allow that was so much commented on in Vijaya Ragava's case (7 Mad. 466). When the misconduct is established the Commissioners at a meeting can recommend the removal; and it is then that the Government has power to remove, and has a discretion whether it will act on the recommendation and exercise that power or not." J. Pargiter's B. M. Act, page 36.

A Full Bench case regarding the removal of a Municipal Commissioner on the ground of misconduct is to be found in *Vijaya Ragava vrs. Secy. of State for India* in Council 7 Mad. 466 (F.B.). Sec. 9 of the Town's Improvement Act (Mad. Act III of 1871) provided that the Governor-in-Council may remove an elected Municipal Commissioner for misconduct. In a suit for damages brought against the Secretary of State by a Municipal Commissioner for wrongful removal from office held that the defendant not having proved misconduct the plaintiff was entitled to damages. Held also that the discretion vested in the Governor-in-Council to remove or not does not arise until the fact of misconduct or neglect is ascertained to have been committed. If the fact of misconduct exists, then there was a discretion vested in the Governor-in-Council either to remove or not. It may be that even though misconduct or neglect by the Commissioner is ascertained to exist yet it may

not be politic, convenient or necessary to remove the Commissioner and accordingly the Governor has a discretion in that case. It is impossible to have a legal foundation for removal on account of or for misconduct unless such misconduct was in fact committed and existed as a fact before the order for removal. The power to remove is only a power to remove for a specific cause—for misconduct or neglect of duty—and it does not arise unless there has been misconduct or neglect of duty.

A Commissioner who has been removed from office under sub-section (1) or under sub-clause (a) of sub-section (2) shall not be re-elected without the consent of the Local Government (see sec. 36).

**Sub-section (2) :—**This sub-section cor. to section 20 of B. M. Act.

Clause (d) is new and taken from the U. P. Act II of 1916, sec. 40 (1) (f). Clause (d) in the original Bill ran thus "If he being a legal practitioner without the consent of the Chairman acts or appears in any suit or other proceeding, on behalf of any other person, against the Commissioners or acts or appears on behalf of any other person in any criminal proceeding instituted by or on behalf of the Commissioners:" and the Notes on Clause para 22 ran thus "Questions have arisen as to the propriety of Municipal Commissioners who are legal practitioners appearing in cases against the municipality or receiving remuneration for appearances on behalf of the Commissioners. In these clauses it is provided that if a Commissioner wishes to appear against the municipality he must get the consent of the Chairman and that he may receive remuneration for work done on behalf of the municipality in Court."

The words "without the consent of the Chairman" were deleted from the section on the recommendations of the Select Committee. Commissioners who are legal practitioners have been expressly debarred from accepting a brief against their own municipality. They themselves are parties in the cases and proceedings and it would be illogical if they accept a brief against themselves. "The object is to prevent the conflict between interest and duty that might otherwise arise." *Nutton vrs. Wilson* (1889) 58 L. J. Q. B. 443." J. Pargiter's B. M. Act. page 85.

A Commissioner who has been removed under clause (b) of sub-section (2) of sec. 35 for absenting himself without permission from 4 consecutive meetings shall not be eligible for re-election for a period of three years from the date of his removal [see sec. 36 (2)]. But if a Commissioner has been removed on the representation of the voters under sec. 35 (3) or under sec. 35 (2) cl. (c) or (d) i.e., for his becoming disqualified under sec. 55 or being a lawyer accepting a brief against the Municipality then as sec. 36 does not

lay down anything to the contrary he may offer himself for a re-election provided the disqualification has ceased.

**Jurisdiction of the Civil Courts.** In the Full Bench case of 7 Mad. 486. *Vijay Ragav vrs. Secy. of State for India* it was held that there was nothing to indicate that the decision of Government should be final and conclusive on the question of misconduct, and without such express words a Commissioner could not be deprived of his ordinary right to come into court and show that there had been no misconduct. Where an act is professedly done under the sanction of law and in the exercise of power conferred by law, the fact, that it is done by the Sovereign power and is not an act which can possibly be done by a private individual, does not oust the jurisdiction of the Civil Courts.

**36. (1) A Commissioner who has been removed from his office under sub-section (1) or under clause (a) of sub-section (2) of section 35 shall not be elected or re-elected a Commissioner without the consent of the Local Government.**

Effect of removal of a Commissioner.

**(2) A Commissioner who has been removed from his office in any municipality under clause (b) of sub-section (2) of section 35 shall not be elected or re-elected a Commissioner of that municipality within a period of three years from the date of his removal.**

#### NOTES.

Sub-section (1) cor. to sec. 22 of B. M. Act. Sub-section (2) is new.

“Under the Bengal Act there is nothing to prevent a Commissioner who has been removed because of continual absence from meetings from at once standing again for election. A disqualification for the period of three years will prevent the punishment of removal from being a mere farce.” Notes on Clauses p 23.

The section does not lay down that a Commissioner who has been removed by the Local Government under sec. 35, sub-section (2), cls. (c) and (d) or sec. 35 sub-section (3) shall not be eligible for election or re-election so it follows that such a Commissioner may offer himself for re-election at once provided the disqualifications have ceased before such date.

**Elected or re-elected :—**The section imposes a disqualification on a Commissioner who has been removed for any reasons given in the section which if not removed will prevent him from ever standing as a candidate for election. When a Commissioner is removed before the expiry of his term of three

years and another election has to take place for substituting him during the period then only the question of his re-election can arise, otherwise when the term is over and in the ordinary course of things a general election has to take place for the municipality in which the whole number of Commissioners has to be elected and the removed Commissioner is a candidate then the question which arises is not "re-election" but "election."

#### MUNICIPAL OFFICERS AND SERVANTS

Scale of establishment and appointment of officers and servants.

**37. (1) The Commissioners at a meeting may, subject to the provisions of this Act and the rules made thereunder, from time to time determine what officers and servants of the Commissioners are necessary for the municipality, and shall fix the salaries and leave allowances to be paid and granted to such officers and servants.**

**(2) Subject to the scale of establishment decided upon by the Commissioners under sub-section (1), the Chairman shall have power to appoint such persons as he may think fit, and from time to time remove such persons and appoint others in their place:**

**Provided that—**

**(i) a person shall not be appointed to an office the salary of which is fifty rupees per mensem or more without the sanction of the Commissioners at a meeting, and that an officer or servant whose salary is more than twenty rupees per mensem shall not be dismissed without such sanction;**

**(ii) the creation of any appointment the maximum pay of which is one hundred rupees or more per mensem, and the increase of the maximum pay of a sanctioned post to an amount exceeding one hundred rupees per mensem shall be subject to the sanction of the Local Government.**

**Explanation.—“ Pay ” includes any special or personal pay or any allowance other than a travelling allowance.**

#### NOTES.

The section cor. to secs. 46 and 61 of B. M. Act.

The Commissioners at a meeting are to determine how many officers and servants are necessary for their establishment as they are the persons who can know how many they will require for efficient working. The Commissioners' powers to employ a sufficient number are subject to the provisions of this Act and rules if any made thereunder and they are also to decide what pay and allowance they will grant to the staff concerned. The Commissioners are to

fix the scale of the establishment but after the scale is once fixed the Chairman as their accredited agent is to appoint persons or remove them as he thinks fit. When an appointment to a post in the Municipal department the salary of which is Rs. 50 per month or more but less than Rs. 100 is to be made it has to be made by the Chairman with the sanction of the Commissioners at a meeting and so also when any dismissal of any servant getting a pay of more than Rs. 20 per month has to be made it has also be done by the Chairman with the sanction of the Commissioners at a meeting. These restrictions are put on the Chairman's powers lest he should use them arbitrarily. The Chairman can appoint a man to a post the salary of which is below Rs. 50 and can dismiss a man getting a salary of Rs. 20 without the consent of the Commissioners.

Sub-section (1):—The appointment of subordinate officers is subject to the provisions of this Act and the rules if any made thereunder.

When a statute has provided a special mode of appointing subordinate officers any appointment made outside the terms authorised by the section is *ultra vires*, whether it is made by the Corporation, Committee or the Chairman. Kedar Nath Bhandary *vs.* The Corporation of Calcutta, 34 Cal. 868 at p. 866=11. C.W.N. 801.

The question of appointing a paid assessor under sec. 46 of B. M. Act was raised at a meeting of Municipal Commissioners, as an amendment to a substantive motion; the motion was lost; but the same question was again raised as a substantive proposition within six months from the date of the first meeting; the proposal being carried an assessor was appointed who revised the assessment of the plaintiff. The plaintiff applied for a review under sec. 113 but the assessment was confirmed under sec. 114 of the Act; held, that the appointment of the paid assessor was not *ultra vires* in as much as the subject of the appointment of an assessor had not been finally disposed of at the first meeting and therefore its reconsideration was permissible and that whether the assessor was or was not legally qualified to make an assessment the validity of such an assessment when once confirmed by the Appeal Committee under sec. 114 of the Act could not be impeached. Chairman of Chittagong Municipality *vs.* Jogesh Chandra Rai, 37 Cal. 44.

**Proviso (ii):**—“ We consider that control by the Local Government or by a Local Self-Government Board, if established, is necessary over the creation of appointments, though the municipality should have full power to appoint persons. We have therefore modified this clause so as to require the sanction of Government to all appointments of Rs. 100 or over and have defined pay so as to guard against the possibility of a municipality creating an appointment on a low rate of salary and then subsequently raising the empo-



luments of the post by means of personal or local allowance" Report of the Select Committee, para 18.

The creation of an appointment is subject to the approval of the Local Government but the appointment of a proper person lies with the Commissioners.

"We do not consider it desirable to give Government power to insist on appointments. The Municipality should decide what posts are necessary" Report of the Select Committee, para. 19.

Power to frame rules for pensions and gratuities or for the creation of a provident or annuity fund.

**38. (1) The Commissioners, at a meeting specially convened for the purpose, by a resolution in favour of which not less than two-thirds of the Commissioners present at such meeting shall have voted may, subject to the approval of the Local Govern-**

**ment, make rules for—**

**(a) the granting of pensions and gratuities out of the municipal fund; or**

**(b) the creation and management of a provident or annuity fund, for compelling contribution thereto on the part of their officers and servants, and for supplementing such contribution out of the municipal fund.**

**(2) The Commissioners at a meeting may from time to time in accordance with such rules—**

**(i) grant pensions or gratuities, or grant allowances or annuities out of such provident or annuity fund to any of their officers or servants, as they think fit;**

**(ii) if they think fit, grant a pension or gratuity to any member of the family of any of their officers or servants who has died from disease or injury contracted in the discharge of a duty which was attended with extraordinary bodily risk.**

#### NOTES.

The sec. cor. to secs. 47 and 59 (d) of B. M. Act. This section applies to persons entirely in the employ of the Commissioners.

**Sub-section (1):—**The Commissioners at a meeting specially convened for the purpose have power to frame rules for the grant of pensions, gratuities to municipal subordinate officers and the creation and management of provident or annuity funds for them. The resolution with the rules must be

adopted at a special meeting and must be supported by at least two-thirds of the number of Commissioners present at the meeting. The rules have then to be sent for approval of the Local Government.

The Government of Bihar and Orissa in the Ministry of Local Self-Government has by notification No. 303 L.S.G. of 7th January, 1922, extended the provisions of the Provident Fund Act, 1897, to all provident funds established by the local authorities.

The Provident Fund established by the Municipal Corporation of Calcutta is governed by the provisions of the Provident Funds Act of 1897 and the Provident Funds (Amendment) Act of 1903. These Acts render any subscriptions to the Fund in the hands of the Trustees of the Fund not liable to attachment. Seth Manna Lal Parruck *versus* Gainsford, 35 Cal. 641 = 12 C.W.N. 633.

**Sub-sec. (2):**—"It is desirable that the payment of pensions or gratuities to the family of municipal officers or servants who die from disease or injury contracted in the discharge of duty attended by extraordinary risk should be legalised." Notes on Clause para. 25.

Power is given by these clauses to Commissioners at a meeting to make payments in proper cases of pensions, gratuities to municipal officers and servants or members of their family, who die from diseases contracted by them in the ordinary course of their duties which are attended with extraordinary bodily risk.

Pension and dismissal in case of Government servants employed by the Commissioners.

**39. (1) The Commissioners shall contribute to the pension, gratuities and leave allowances of any servant whose services are lent or transferred by Government to the Commissioners.**

**(2) Such contributions shall be to the extent fixed by Government.**

**(3) The Commissioners shall not, without the assent of Government, dispense with the services of any servant described in sub-section (1) unless they have given Government at least three months notice.**

**(4) In this section "Government" means the Government of India or any Local Government.**

#### NOTES.

The sec. cor. to sec. 48 of B. M. Act.

"The contribution by the Municipal Commissioners to the pension, gratuities and leave allowances of servants whose services are transferred or lent to them by Government is, following the law in the United Provinces

made compulsory. Under the existing Act such contribution is optional." Notes on Clause p. 26.

This section applies to Government officers whose services are lent or transferred to the Commissioners. The terms on which their services are lent are fixed by the Government.

This section makes the contributions to the pensions, gratuities and leave allowances of officers whose services are lent or transferred compulsory, the amount being fixed by the Government. Their services also cannot be dispensed with by the Commissioners without the assent of the Government and without 3 month's previous notice being given to it.

The 3 month's notice is obligatory to enable the Government to make arrangement for the employment of the officers in other works.

**Sub-section (4) :—**The officers whose services are lent or transferred may be one whose services are under the Local Government or the India Government; so the word "Government" according to this sub-section means either the Local Government or the Government of India and the terms of the service and the amounts of pay, etc., of the officers will be fixed by the Government concerned.

Notice to be given by mehter of intention to withdraw from service

**40. (1) A mehter or other servant of the Commissioners employed to remove or deal with sewage, offensive matter or rubbish shall not withdraw from his duties without the permission of the Commissioners, unless he has given notice in writing not less than one month previously of his intention so to withdraw.**

**(2) Any mehter or other such person who withdraws from his duties without giving such notice as aforesaid shall be liable to rigorous imprisonment for a term not exceeding one month, and shall forfeit all salary which may be due to him.**

#### NOTES.

This section corresponds to section 188 of the B. M. Act. The section as it stood in the original Bill of 1921 contained another clause, viz., clause 3 and a proviso which empowered the Commissioner of the Division to direct that the provisions of sub-section 1 & 2 shall apply also to any other specified class of servants of Commissioners whose functions intimately concern the public health and the proviso required the Commissioner of the Division to forthwith forward a copy of the order with his reasons to the Local Government who could rescind the order or make the order permanent. On the

recommendation of the Select Committee sub-clause 3 was deleted. "It does not appear necessary to take power to extend the clause penalising the withdrawal of *meheters* from services to other classes of employees. We have therefore omitted sub-clause 3." Report of the Select Committee, para. 20.

This section provides an efficient and speedy way of dealing with *meheters* and others employed in the removal of sewage, offensive matter, etc., who strike work suddenly without proper previous notice.

See sec. 375 as to the procedure for prosecutions.

"When a Municipality has imported *meheters* under a legal contract in writing to work for them and the *meheters* desert they are also liable under sec. 492 I. P. C. to similar punishment." J. Pargiter's B. M. Act, page 197.

**41. If any person employed under this Act (not being a public servant within the meaning of section 21 of the Indian Penal Code) accepts or obtains, or agrees to accept or attempts to obtain from any person for himself or for any other person, any gratification whatever other than legal remuneration, as a reward for doing or forbearing to do any official act, or for showing or forbearing to show in the exercise of his official functions favour or disfavour to any person, or for rendering, or attempting to render any service or disservice to any person with the Commissioners or with any public servant, or with the Government in the discharge of his official duties, he shall be punished with imprisonment, either simple or rigorous, as provided in section 53 of the Indian Penal Code, for a term which may extend to three years, or with a fine not exceeding five thousand rupees, or with both.**

Penalty on officers  
etc., taking unauthorised  
fees.

#### NOTES.

The section corresponds to section 366 B. M. Act.

This section provides a punishment, for offenders who are not public servants within the meaning of sec. 21 of the Indian Penal Code, similar to that provided by sec. 161 of the Penal Code for public servants. Persons who are in the employment of the municipality but who strictly do not come within the definition of public servants are liable to be dealt with under this section.

The word "employed" in sec. 249 of the Bombay Municipal Act (Bombay Act III of 1888) refers to employment of any kind or for any length of time and the word as used in this section is obviously used in its ordinary sense, i.e., caused to be engaged in doing some service. *Municipality of Bombay vrs. Ahmeda Bhoy and Habi Bhoy*, 28 Bombay 528.

A Municipal Commissioner is a public servant within the meaning of sec. 21 I. P. C.

It has been held in Madras that a municipal Inspector is a public servant within the meaning of sec. 41 of the Madras District Municipality Act (Mad. Act IV of 1884). *Q. E. vs. Ramaswami*, 13 Madras 181.

A Sanitary Inspector under the Madras Act (Madras Act IV of 1884) is a public servant. *Queen Empress vs. Tiru Vengada*. 21 Madras 428.

In Bombay an Engineer who received and paid municipal money came under the definition. *Reg vs. Nantamram*, 6 Bombay, Cr. 64. See also sec. 182 and notes thereto.

In the Municipal Bill of 1921 the original clause 41 provided that a person shall not be eligible for the office of Chairman, Vice-Chairman, Secretary, Engineer, Health Officer, Sanitary Inspector, Assessor, Tax Collector, Accountant or Overseer of the Municipality if he is seriously indebted to any person. This clause on the recommendation of the Select Committee was omitted from the Act. The report of the Select Committee, para. 21 ran thus: "We consider it unnecessary to incorporate in the Act this provision regarding indebtedness. The municipal Commissioners may be trusted to see that the principle is observed." The clause sought to apply the same rule relating to indebtedness on the part of government servants to officers paid from local funds.

**42. (1) The Commissioners at a meeting may make rules consistent with this Act and subject to the approval of the Local Government as to—**

**(a) the duties, appointment, leave fining, suspension and removal of officers and servants of the Commissioners; and**

**(b) the nature and amount of security to be furnished by different classes of officers or servants of the Commissioners for the proper discharge of their duties.**

**(2) The Local Government may make rules consistent with this Act to prescribe the qualifications of candidates for employment by the Commissioners, and to declare what circumstances shall be a disqualification for continuance of such employment.**

#### NOTES.

Sub-section (1) was clause 42 and sub-section 2 was clause 43 (a) in the original Municipal Bill of 1921. The Select Committee retained only these provisions. "In view of decisions previously noted we have omitted sub-

clauses (b), (c), (d) of old clause 43 but have retained sub-clause (a). It is desirable that qualifications of some municipal servants, *e.g.*, Compounders, Engineers, etc., should be fixed." Report of the Select Committee, para 22.

**Consistent with this Act:**—The rules must be consistent with the aim, scope and object of this Act as shown by its provisions.

For the meaning of similar words in the Bombay Act, viz., "not inconsistent with this Act" see *Tribhuban Chunilal vrs. The Ahmedabad Municipality*, 27 Bombay, 221 at page 240. See also notes to sec. 19 *ante*.

**Sub-section 1 (a):**—This sub-section corresponds to sec. 351 (A) (1) (f) of B. M. Act.

**Clause (b):**—Corresponds to sec. 49 of B. M. Act. The Commissioners or the Chairman could deal with matters relating to the taking of security under sec. 49 or sec. 44 of the B. M. Act. Both these things are now regulated by rules made by Commissioners with the approval of the Local Government.

Sub-section (2) corresponds to sec. 349 F of B. M. Act and sec. 89 (2) (ix) of the Assam Act I of 1915.

#### CONDUCT OF BUSINESS.

##### Ordinary Meetings.

**43. (1) The Commissioners shall meet for the transaction of business (if there be any business to be transacted) at their office, or at some other convenient place, at least once in every month, and as often as a meeting shall be called by the Chairman, or, in his absence, by the Vice-Chairman.**

**(2) If there be no business to be laid before the Commissioners at any monthly meeting, the Chairman shall, instead of calling the meeting, give notice of the fact to each Commissioner three days before the date which is appointed for the monthly meeting.**

#### NOTES.

The section corresponds to sec. 38 of B. M. Act.

**Ordinary meetings:**—This section provides for the calling of ordinary meetings, the next section provides for, special meetings. Ordinary meetings must be held once every month unless there is no business to be transacted. Such meetings may be called as often as necessary by the Chairman or the Vice-Chairman and apparently meetings called on any other occasion in the ordinary way would fall within the category of "ordinary meetings."

**Absence :—**Refers to absence from any cause.

**Special meetings :—**is a meeting convened by the Chairman or Vice-Chairman on a requisition signed by not less than 3 of the Commissioners or the meeting called by the persons who sign the requisition on the failure of the Chairman or the Vice-Chairman to call such a meeting within 15 days; the name does not depend on the subject to be laid before the meeting nor on the time but on the manner in which the meeting is called.

**Meeting convened for special purpose.** In certain sections, *viz.*, secs. 84, 85, 88, reference is made to a " meeting specially convened for the purpose " and to a " meeting convened expressly for the purpose " (sec. 82). Such meetings are special in so far as they are convened to consider some special subject, but they would not be " special meeting " within the meaning of sec. 44, unless they were called in the manner indicated by the section.

**Place of meeting.** A meeting can be held either in the Municipal office or in some convenient place of which notice must have been given. See sec. 57 in this connection.

**Notice :—**This section makes mention of two kinds of notice, one for calling a meeting by the Chairman or in his absence by the Vice-Chairman and another for informing the fact that there is no business to be transacted on the fixed date of the monthly meetings and that there should be no meeting. The notice must state the date, time, place of meeting and the most important fact, *viz.*, the business to be transacted. The general rule is that when a notice states that a particular business is to be conducted in a meeting, no other business can be taken up at that meeting unless all the Commissioners give their consent and that matter in order to be binding on the Commissioners must be confirmed at the next ordinary meeting. (See Rule 6 and 84 of the Model Rules for Municipalities Appendix). See also notes to sec. 57.

Meeting on requisition by Commissioners.

**44. (1) The Chairman, or in his absence, the Vice-Chairman, shall call a special meeting on a requisition signed by not less than three of the Commissioners.**

**(2) If the Chairman or the Vice-Chairman fails to call a special meeting within fifteen days after any such requisition has been made, the meeting may be called by the persons who signed the requisition.**

#### NOTES.

The section corresponds to sec. 89 of B. M. Act.

" The section implies that a special meeting is one which is called on the requisition of at least three Commissioners, the name does not apparently depend on the subject to be laid before the meeting nor on the time

but on the manner in which the meeting is called. The section imposes no limit on the subjects that may be considered at such a meeting." J. Par-  
giter's B. M. Act, p. 72.

" Meeting specially convened for the purpose " and " a meeting convened expressly for the purpose " as used in some sections, *vis.*, secs. 84, 85, 88 and 82 respectively would not come within the category of "special meetings" as defined in this section, although they are convened for a special purpose or to consider a special matter as they are not called by a requisition of at least three Commissioners but are called in the ordinary way by the Chairman or Vice-Chairman.

The words " special meeting " as used in sec. 3 Bengal Tramway Act III (B. C.) of 1883 seems to be equivalent to what is according to this Act an " ordinary meeting convened for a particular purpose."

The mode of calling a Special General Meeting is prescribed by Bombay Act II of 1884 which by sub-section (2) of section 27 provides that "the President may, whenever he thinks fit and shall upon the written request of not less than one-fourth of the Commissioners, call a Special General Meeting." If the meeting be not so called the defect is not cured by section 27 (17). Abayi Sitaram Modak and another *vs.* The Trimbak Municipality, 28 Bom. 56.

The number of Commissioners who could requisition for calling a special meeting is fixed at a minimum of three irrespective of the number of the Commissioners in the Municipality.

Meetings specially convened or convened expressly for certain purposes are necessary for the consideration of the following subjects:—

- (a) to remove a Chairman or Vice-Chairman, under section 84.
- (b) to protest against the introduction of a water-supply or drainage scheme, (sec. 296) or to apply for a sanction to a scheme for water-supply, lighting; (sec. 292).
- (c) to frame provident or annuity fund rules; sec. 88.
- (d) to impose rates and taxes; sec. 82.
- (e) to frame bye-laws; secs. 185, 234, 258, 274, 325, 355.
- (f) to sanction grants for the establishment and maintenance of schools, hospitals or dispensaries, etc.; sec. 68 (1) (vii).

The object of a meeting specially convened or convened expressly for a purpose is that each member may attend and consider a special and emergent matter and a notice of such meeting must be such as to draw his special attention to it.



**45. (1)** The President, if any, shall preside at every meeting, and, in the absence of the President, the Commissioners shall choose some one of their number other than the Chairman or Vice-Chairman to preside.

**(2)** In any municipality which has been excepted from the operation of section 28 the Chairman, or in his absence, the Vice-Chairman, or, in the absence of both the Chairman and the Vice-Chairman, a Commissioner elected at the meeting shall preside.

**(3)** Notwithstanding anything contained in sub-section (1) or (2), no one who is a candidate for election to the office of Chairman, Vice-Chairman or President shall preside at a meeting at which an election to such office takes place.

#### NOTES.

The section corresponds to section 40 of the B. M. Act.

Under section 28 all municipalities must have a President elected by the Commissioners at a meeting unless the Local Government by notification excepts the municipality from the operation of that section.

In the original Bill of 1921 clause 46 (present sec. 45) did not contain sub-sections (1) and (3). The provision as to the election of the President was introduced on the recommendation of the Select Committee. See notes to sec. 28 *ante* for the reasons for the recommendation.

"The present clause has been modified in view of the decision regarding the President." Report of the Select Committee, para. 23.

A municipality may have a President or not. If a President is elected he must preside at all meetings in which he is present, but if he is absent for any reason then the Commissioners shall choose one out of their number other than the Chairman and the Vice-Chairman to preside in those meetings. But if there is no President for any municipality then the rule is that the Chairman and in his absence the Vice-Chairman and in the absence of both any of the Commissioners present may be selected for the occasion.

"If the Chairman and Vice-Chairman are both absent the Commissioners present, should make this choice even if they can do no business for want of a quorum in order that the person chosen may fix the day to which the meeting shall stand adjourned." Justice Pargitar's Bengal Municipal Act, page 78. See sec. 47 in this connection.

**Sub-section (3):**—A President is to preside in all meetings but if there is no President for any municipality then the Chairman or Vice-Chairman or

in their absence any other Commissioner selected for the occasion presides. This sub-section lays down that no one who is a candidate for election whether for the office of President, Chairman or Vice-Chairman shall preside at the meeting at which the election of such office-bearers takes place. Under sec. 46, sub-sec. (2) the President has a casting vote in the case of equality of votes; if the candidates for the various offices were to be President in the election meetings, they could get the possible advantage of their own casting votes; this sub-section excludes any possibility of such happenings.

Decision of questions  
and casting vote.

**46. (1) All questions which may come before the Commissioners at a meeting shall be decided by a majority of votes, save as is otherwise provided in this Act.**

**(2) In the case of equality of votes, the president of the meeting shall have a second or casting vote.**

#### NOTES.

The section corresponds to sec. 41 of the B. M. Act.

**Procedure:** The Commissioners at a meeting subject to the approval of the Local Government, are to make rules for the conduct of business in the municipality (sec. 52) and the businesses are regulated by those rules. Rules as to the order of business, motions, speeches, amendments, etc., are offered in the Model Rules for Municipalities. See Appendix.

"This section follows the well-established rule; and a bare majority is ordinarily sufficient; whether the President's casting vote is called into use or not. Only those present at the time of voting can vote; voting by proxy is not allowed." Justice Purgiter's B. M. Act, page 78.

**Save as is otherwise provided.** In certain cases more than a bare majority is required as in meetings for removal of Chairman or Vice-Chairman (sec. 34) or Commissioners (sec. 35), granting pensions or gratuities, etc., to any municipal officer or servant (section 38), contributing to areas outside the municipal area (sec. 70) or for resolution against the introduction of any scheme prepared by the Local Government for any municipality (sec. 296).

There are also meetings in which some Commissioners are debarred from voting, *e.g.*, in cases in which any proceeding relating to any matter in which the Commissioner has a share or interest is discussed (sec. 55) or in which his conduct or question regarding assessment of his own property are discussed (sec. 56).

President of the meeting in sub-section (2) means the person who presides at the meeting whether he be the President of the municipality or one elected for the purpose under sec. 45.

Quorum and adjournment for want thereof

**47. (1) No business shall be transacted at any meeting of the Commissioners unless such meeting has been called by the Chairman or Vice-Chairman or under section 44 by persons signing a requisition, nor unless a quorum be present.**

**(2) A quorum shall be in any municipality in which the Commissioners are more than fifteen, five; and in any other municipality a number being not less than one-third of the entire number of Commissioners:**

**Provided that the quorum for all business on which salaried servants of Government are under the provisions of this Act prohibited from voting, shall be exclusive of such salaried servants.**

**(3) If at the time appointed for the meeting, or within half an hour thereafter, a quorum is not present, the meeting shall stand adjourned to some future day to be appointed by the president of the meeting, and three days' notice of such adjourned meeting shall be given. The members present at such adjourned meeting shall form a quorum whatever their number may be.**

#### NOTES.

The section corresponds to sec. 42 of B. M. Act.

**Unless such meeting has been called:—**The meeting must be legally convened before it can transact business. All municipal meetings must be called by either the Chairman, Vice-Chairman or by the persons signing the requisition under sec. 44. Notice of such meetings must be given to all the Commissioners. See section 57 as regards notice.

The Bombay District Municipal Act (Act VII of 1873) secs. 11 cl. (1) and 22 required that a notice of a meeting to impose a house-tax on a town must be served on all the Commissioners and a notice specifying the business to be transacted therein had to be posted up at the *Kacheri* and the resolution had to be sanctioned by the Government. In a suit by the plaintiffs for refund of a sum alleged to have been illegally levied as rate held that the provisions as to giving notice of the meeting was not directory but obligatory and notice to all the Commissioners of the meeting being a material part of the machinery provided by the Act for imposing a legal tax was a condition precedent to the validity of the tax. Consequently, the re-

solution in a meeting, notice of which was not served on three Commissioners, was not legal and whether sanctioned or not by the Government, it always retained its inherent defect. *Joshi Kalidas Sevaram vs. The Dakor Town Municipality*, 7 Bom. 399.

A defendant who in answer to a claim for arrears of taxes by a Bombay District Municipality alleged that the taxes were illegal—(1) because no notice had been given under sec. 57 of the Act; (2) because no notice had been issued by the municipality to the Commissioners under sec. 11 of the Act; must prove the defence and in the absence of such proof the Court will presume that the municipality had used the regular procedure and that the common course of business had been followed in the particular case. *The Municipality of Sholapur vs. The Sholapur Spinning and Weaving Company, Ltd.*, 20 Bom. 792.

**Entire number of Commissioners:**—refers to the number fixed by the Local Government under sec. 13.

Salaried servants of Government cannot vote in meetings referred to in sec. 20.

The number fixed in this section for a quorum, applies to ordinary meetings and what is ordinarily required for a quorum, but in the cases of meetings under secs. 34, 35, 38, 70 and 296 different quorum, is prescribed, *viz.*, two-thirds of the total number of Commissioners. "The quorum of a body may be defined to be that number of a body which when assembled in their proper place will enable them to transact their proper business or in other words, that number that make the lawful body and give them the power to pass a law or ordinance." Aiyangar's Law of Municipal Corporations, p. 58. "The actual presence of the quorum in the meeting is sufficient although some members refuse to vote or even though they be present under compulsion or arrest." *Ibid* p. 59.

**Adjourned meeting.** If a meeting is not properly convened it is defective. If the meeting is adjourned, then the adjourned meeting is a continuation of the previous meeting and if the previous one is defective the latter is also defective. *Abayi Sitaram vs. Trimbak Municipality*, 28 Bom. 66.

"An adjourned meeting is held to be the continuation of the original meeting and is not competent to transact any business save that which the original meeting left unfinished." *Palgrave's Chairman's Hand-Book*, p. 37. See Rule 31 of the Model Rules (Appendix).

The rules as to quorum do not apply to meetings adjourned for want of a quorum, .

" If a quorum is not present and the meeting be adjourned, the Commissioners present must, if the Chairman or Vice-Chairman are absent, choose one of their number to preside according to sec. 40 (sec. 45) in order that the ' president ' so chosen may appoint the day to which the meeting shall stand adjourned." J. Pargiter's B. M. Act p. 75.

An adjourned meeting does not require any fresh notice. See Rule 82 of Model Rules (Appendix).

Minutes of  
proceedings.

**48. (1) Minutes of the proceedings of all meetings of the Commissioners shall be entered in a book to be kept for the purpose, and shall be signed by the president of the meeting and such book shall be open to the inspection of the tax-payers.**

**(2) A copy of the minutes of the proceedings of all meetings of the Commissioners shall be forthwith forwarded by the Commissioners to the Local Government or to such authority as the Local Government may direct.**

#### NOTES.

The sec. corresponds to sec. 48 of B. M. Act.

The minutes are the record of all the material proceedings that take place at any meeting and they are required to be signed by the president of the meeting.

Proceedings of the municipality are recorded and signed by the president and they become effective and needs only a formal confirmation at the next ordinary meeting but when any business of which notice has not been given, is considered at a meeting, the decision recorded or resolution adopted at such meeting shall be of no effect unless and until it is confirmed at the next meeting. See Rule, 84 of Model Rules (Appendix). The practice of confirming the proceedings of all meetings in all subsequent meetings is formal and for checking mistakes, etc.

**Confirmation of proceedings.**—"The confirmation of minutes is a formal proceeding designed solely for the ratification of the record and no discussions can be raised thereon regarding the policy enforced by the minutes. No general debate can be allowed nor can modification be made in decision already arrived at and recorded in the minutes. Verbal inaccuracies can of course be corrected." Letter No. 761-65 L.S.G. dated the 9th June 1924, from the Secretary to the Government in the Ministry of Local Self-Government to the Commissioner, Orissa Division.

" In the case of meeting of public bodies, ' confirm ' is commonly used in the sense of to ' verify.' Per Lord Campbell, C. J. ;—' To confirm the

minutes of a meeting means not to give them force, but to declare them accurate.' Reg. v. York, Mayor 1 E and B 588 at p. 594." Collier's Municipal Manual (Seventh Edition), p. 52.

**Proof of proceedings.** Sec. 78 sub-sec. (5) of the Evidence Act prescribes that proceedings of a municipal body may be proved by the production of a copy of such proceedings certified by the legal keeper thereof.

A legitimate way of proving the proceedings of a municipality in British India is by a copy of such proceedings certified by the legal keeper thereof or by a printed book purporting to be published by the authority of such body. Presumption that official acts have been regularly performed cannot supply the deficiency of proof. Syed Mokram Ali *vs.* the Cuttack Municipality, 17 C. W. N. 581.

The Secretary of a Municipal Board is a public officer within the meaning of Art. 22 of the Indian Stamp Act for the purposes mentioned therein. A copy of an order passed by the Municipal Board on a petition presented to it and certified to be a true copy by the Secretary requires to be stamped under the article. Reference under section 46 of Act I of 1879. 19 All. 293.

**Sub-section (2):**—cor. to sec. 60 of B. M. Act. A copy of the proceedings is to be immediately sent to the Local Government or the District Magistrate if the Local Government so directs to keep them informed of what the Commissioners are doing.

**Forthwith.** "When a statute requires that something shall be done 'forthwith' or 'immediately' or even 'instantly' it would be understood as allowing a reasonable time for doing it." Maxwell on Interpretation of Statutes, p. 608 (Sixth Edition).

The minutes need not be confirmed, which would mean a delay till the next ordinary meeting, before despatch.

Where a District Magistrate is not in any way concerned with a municipality, the mere fact that he receives copies of the proceedings of the municipality in his capacity as official head of the district, would not debar him from hearing an appeal against the conviction of a servant of the municipality. Tej Narain Singh *vs.* Emperor through Bhoi Dineshwar Prasad, 61, I. C. 515.

## COMMITTEES.

### Committees.

**49. (1)** The Commissioners at a meeting may appoint Committees to assist them in the discharge of the duties devolving upon them under this Act, within the whole or any portion of the municipality, in regard to all or any of the following subjects, namely—

- (a) finance,
- (b) public health,
- (c) public works,
- (d) education,
- (e) hospitals and dispensaries, and
- (f) any other special subject relating to the purposes of this Act.

(2) The Commissioners at a meeting may delegate to any such Committee any of their powers and duties or withdraw all or any of the powers and duties so delegated.

(3) Each such Committee shall, in the performance of the duties and in the exercise of the powers delegated to it, be liable to all the obligations imposed by this Act on Commissioners in respect of such duties and powers.

(4) All the proceedings of any such Committee shall be subject to confirmation by the Commissioners at a meeting, unless the Commissioners at a meeting in delegating such powers and duties direct that its decision shall be final.

#### NOTES.

The section is a new one. In the Bengal Act there were Ward Committees (Sec. 50, 56-58 B. M. Act) whose functions were widely different from the Committees mentioned in the present section.

" The provisions relating to the appointment of Committees mentioned in the Statement of Objects and Reasons (quoted below) have been largely borrowed from the Bombay District Municipalities Act, 1901. Special provisions as to the constitution and functions of an Education Committee are made in Chapter XI of the Bill." Notes on Clauses, p. 29.

" The recommendations of the Decentralisation Commission with regard to the delegation of certain powers, at present exercised by the Local Government to the Commissioners of the Division especially the power to appoint, remove or accept the resignation of Commissioners, and their Chairman have been adopted in the Bill (but changed in the Act). In view of the wide extent of the functions entrusted to the Commissioners and to facilitate the speedy transaction of their work, provision is made for the appointment by them of Committees to deal with the various branches of Municipal Administration, while a new departure is made in allowing the Commissioners to appoint persons of either sex, who are not Commissioners but who have special qualifications to be members of any Committee in

order that the Commissioners may have the benefit of their advice." Statements of Objects and Reasons, para. 3.

In the Original Bill (B. and O. Municipal Bill) of 1921, Clause 50 ran thus:—

" (1) In any municipality or class of municipalities to which this section is extended by the Local Government by notification the Commissioners in a meeting may, and when so required by the Local Government shall, appoint from among their number Committees to assist them in the discharge of the duties devolving upon them under this Act, within the whole or any portion of the municipality in regard to all or any of the following subjects, namely,—

(a) Finance.

(b) Sanitation.

(c) Public Works.

(d) Any other special subject relating to the purposes of this Act, and may delegate to any such Committee such of their powers as may be necessary for the purpose of rendering such assistance or withdraw all or any of their powers so delegated.

(2) Each such Committee shall perform the duties assigned to it by this Act or the rules made thereunder and may exercise the powers delegated to it, and shall be liable to all the obligations imposed by this Act on Commissioners in respect of such power.

(3) All the proceedings of any such Committee shall be subject to confirmation by the Commissioners at a meeting.

(4) All questions regarding the removal or resignation of members of a Committee shall be settled by the Commissioners at a meeting."

The clause as framed in the Original Bill was modified by the Select Committee and the present section was substituted the reason given for it was " We attach importance to the formation of Committees and have therefore amplified this clause. In view of this modification old clause 847 regarding an Education Committee has been omitted." Report of the Select Committee, para. 24.

The Commissioners at a meeting have to appoint Committees to deal with the six branches of municipal administration mentioned in the section and may delegate to them any of their powers and duties or withdraw the powers and duties once delegated and while delegating their powers and duties the Commissioners may resolve that their decision on the matters



delegated to them would be final or be subject to confirmation by themselves at a meeting.

**Constitution of  
Committees.**

**50. (1) A Committee shall consist of not less than three nor more than six Commissioners and of any person of either sex who is not a Commissioner but who may, in the opinion of the Commissioners, possess special qualifications for serving on such Committee:**

**Provided that the number of persons appointed on any Committee who are not Commissioners, shall not exceed one-third of the total number of the members of such Committee.**

**(2) All the provisions of this Act relating to the duties, powers, liabilities, disqualifications and disabilities of Commissioners shall be applicable, so far as may be, to such persons.**

**NOTES.**

Section new and based on Sec. 31 of Bombay Act III of 1901. The Committee shall consist of at least 3 or at most 6 Commissioners together with any other person of either sex not being a Commissioner but possessing special qualifications on any matters left to be decided by the Committee.

See notes to Sec. 49 and the Statement of Object and Reasons, para. 3 quoted there in this connection.

Although outsiders may be taken in there is a limit to their number, that is their number is never to exceed one-third of the number of the total members of the committee.

Under this Act females who have certain educational qualifications can be elected Commissioners [see sec. 15 sub-sec. 2, cl. (c)] and by sub-sec. (1) of this section females who are not Commissioners but who have special qualifications on education, etc., can be taken in as members, of the Committees appointed under Sec. 49.

**JOINT-COMMITTEES.**

**Formation of  
Joint-Committees.**

**51. (1) The Commissioners of any municipality at a meeting may, and when so required by the Local Government shall, join with any other local authority in constituting out of their respective bodies a Joint-Committee for any purpose in which they are jointly interested, and in delegating to any such Joint-Committee any power which might be exercised by the Commissioners or any of the local authorities concerned.**

**(2) Such Joint-Committee may, subject to the approval of the Local Government, from time to time frame rules as to the proceedings of any**

**such Joint-Committee, and as to the conduct of correspondence relating to the purpose for which such Joint-Committee is constituted.**

### NOTES.

The section corresponds to Sec. 37A of B. M. Act.

“ We consider that the formation of Joint Committees may frequently serve a useful purpose, *e.g.*, a Joint Public Health Committee consisting of representatives of the District Board and municipalities and hence have given power to Government to direct the appointment of such Committees.” Report of the Select Committee, para. 25.

These provisions were introduced with the hope that recourse would be had to them fully and frequently in the larger municipalities, which had not been provided with a wholesome water-supply or with a good system of drainage. This section leaves a municipality to take the initiative and in the last event the local Government may compel it to constitute a Joint Committee.

Such Committees are useful in carrying out big schemes in which one municipality and any other local authority such as any other municipality, district board, or cantonment-Committee are jointly interested, *e.g.* water works, water-supply schemes, drainage or electric-supply schemes, etc., which, either of these institutions cannot carry out singly.

Joint Committees framed under sub-section (1), subject to the approval of the local Government, shall frame their own rules for their proceedings and the conduct of business relating to the purposes for which they are constituted.

Under sec. 37A of B. M. Act the number of representatives from each of the separate bodies combined together was fixed at 2 but under the present section there is no such limitations and their number will depend on the requirements of each case.

### RULES OF BUSINESS.

Power to make rules as to election of Chairman, Vice-chairman and President, and business of Commissioners and Committees.

**52. The Commissioners at a meeting shall make rules consistent with this Act and subject to the approval of the Local Government as to all or any of the following matters:—**

**(a) the manner of election of the Chairman, Vice-Chairman and President;**

(b) the time and place of their meetings, the business to be transacted at meetings, and the manner in which such notice of meetings shall be given;

(c) the conduct of proceedings at meetings, the due record of all dissents and discussions, and the adjournment of meetings;

(d) the custody of the common seal;

(e) the division of duties among the Commissioners and the powers to be exercised by members to whom particular duties are assigned; and

(f) the manner of appointment of Committees and Joint-Committees and of their Chairmen and the regulation and conduct of their business.

#### NOTES.

The section corresponds to section 351A of B. M. Act.

The procedure prescribed by the section should be strictly followed to give the rules legal validity; the procedure is that they should be framed at a meeting of the Commissioners and approved by the Local Government before they have the force of law; again to make the meeting a legal one it must be legally convened, i.e., called by the Chairman or, Vice-Chairman and presided over by the President; in other words the meeting must strictly comply with the requirements of Secs. 43 to 48.

The rules framed in accordance with this section and approved by the Local Government have the force of law and once they are so framed the presumption as to strict compliance by the municipalities of the formalities attaches to them and the onus of proving any alleged irregularity will lie on the person challenging their validity. See *The Municipality of Sholapur vs. The Sholapur Spinning and Weaving Company*, 20, Bombay 732.

The fact that the appointment of an assessor under Sec. 46 was found to be defective under the bye-laws framed under the section will not make any assessment by him invalid, specially when such assessment has been reviewed by the Appeal Committee. The Act provides only incidentally for the appointment of a paid assessor and makes no provision whatever as to the method or means of assessment. It is wholly immaterial what machinery is used for arriving at the valuation. All that is required is that there should be an assessment ready for publication and open to review under secs. 112 to 114 (B. M. Act). *Chairman of Chittagong Municipality vs. Jogesh Chandra Roy*, 37 Calcutta 44.

' Consistent with this Act ' means consistent with the aim, scope and object of this Act. For the meaning of the expression see notes to Sec. 19, in which this expression occurs.

The words used in the Bengal Municipal Act were " not inconsistent with this Act " which were held to mean not inconsistent with the aim, scope and object of the Act as shown by its provisions. See *Tribhovan vs. Ahmedabad Municipality*, 27 Bombay 221 at p. 240 in this connection.

#### LIABILITIES AND DISABILITIES OF COMMISSIONERS.

Personal liabilities  
of Commissioners.

**53. (1) No Commissioner shall be personally liable for any contract made, or expense incurred, by or on behalf of the Commissioners.**

**(2) Every Commissioner shall be personally liable for any wilful misapplication of money entrusted to the Commissioners to which he shall knowingly have been party and he shall be liable to be sued for the same.**

#### NOTES.

The section corresponds to Sec. 56 of the B. M. Act.

This section deals with the personal liability of the Commissioners their corporate liability is discussed in Sec. 12.

This section safeguards Commissioners from personal liability in respect of contracts made or expenses incurred by or on behalf of the Commissioners; yet even as regards these matters they are personally liable for the wilful misapplication of money entrusted to them, if they have knowingly been parties thereto.

Municipal Commissioners and their servants incur no personal liability, for what they do so long as they act in the line of their duty. But if they do, or order to be done, that which is not within the scope of their authority, or if they are guilty of negligence or misconduct in doing that which they are empowered to do, then they render themselves personally liable to an action. There is no special law extending to members of municipalities which protects them so long as they act *bona fide*. See *Soonder Lall vs. Dr. N. D. Bailee*, 24 W. R. 287.

It is only with respect to things within the scope of the authority of Municipal Commissioners that this section allows them immunity, but all other matters are untouched by this section, and according to the ordinary law they may be responsible for gross negligence, wrong-doing, etc.

Commissioners not  
to be remunerated.

**54. Except as provided in section 55 a Commissioner shall not be allowed any remuneration from the municipal fund except with the sanction of the Local Government.**

### NOTES.

The section is new and taken from the U. P. Act II of 1916, Sec. 37.

No Commissioner, Chairman or Vice-Chairman is to be allowed any remuneration from the municipal fund except what the Local Government may sanction in special or exceptional cases, under Sec. 55. Sec. 35 subsec. 2 (d) debars a Municipal Commissioner who is also a legal practitioner from accepting any brief against the municipality of which he is a Commissioner and under this section he is debarred from getting any remuneration for any legal work he may do for the municipality.

Penalty on Commissioner acquiring interest in contract, etc.

**55. Any Commissioner who, otherwise than with the sanction of the Local Government, knowingly acquires or continues to have directly or indirectly, by himself or his partner, any share or interest in any contract or employment with, by or on behalf of the Commissioners, or holds any office of profit under the said Commissioners, shall thereby become disqualified to continue in office as a Commissioner and shall be liable to a fine not exceeding five hundred rupees:**

**Provided that a Commissioner shall not be so disqualified or liable by reason only of his having a share or interest in—**

**(a) a contract entered into between the Commissioners and any incorporated or registered company of which such Commissioner is a member or share-holder; or**

**(b) any lease, purchase or sale of land, or any agreement for the same; or**

**(c) any agreement for the loan of money, or any security for the payment of money only; or**

**(d) any newspaper in which any advertisement relating to the affairs of the municipality is inserted;**

**But no such Commissioner shall act as Commissioner or member of a Committee, or take part in any proceedings relating to any matter in which he has a share or interest as described in this proviso.**

## NOTES.

In the original Bill of 1921 for the words "with the sanction of the Local Government" the words used were "with the permission in writing of the Commissioner of the Division." The change was suggested by the Select Committee and accepted by the Legislature.

In the original Bill there was a sub-clause (2) after sub-clause (d) which ran thus "of his being professionally engaged on behalf of the municipality as a legal practitioner and receiving a fee for services rendered in his professional capacity." The Select Committee in their report stated "We have omitted proviso (2) as in our opinion a Municipal Commissioner who is also a legal practitioner should give his services gratis in municipal cases. In exceptional cases the sanction of Government can be taken to the payments of a fee." Report of the Select Committee, para 27.

"This clause confers a power on the Commissioner of the Division not recognised in section 57 of the Bengal Act that any member, officer or servant of the municipality can with the written permission of the Commissioners of the Division (now with the sanction of the Local Government as the section has been differently worded) be directly or indirectly interested in a contract made with the municipality. This provision might be useful, for instance, in a case where a District Engineer, who is also a Municipal Commissioner is supervising the work carried out by the District Board for the Municipality. Under the present law he has to resign his office, because he will probably be paid by the District Board a portion of the sum which is received from the municipality in payment of supervision charges. So too cases where a Municipal Commissioner is owner of a shop from which the Commissioners can purchase most easily and cheaply certain commodities." Notes on Clauses to the section as it stood in the Original Bill of 1921, para 31.

The section corresponds to sec. 57 of B. M. Act, and section 82 of U. P. Act II of 1916.

"This section is similar to sec. 12 in the English Act, 45 and 46 Vict. c. 50. The object is to prevent the conflict between interest and duty that might otherwise arise. *Nutton vrs. Wilson* (1889), 58 L.J.Q.B. 443," Justice Pargiter's B. M. Act, page 85.

**Knowingly acquires or continues to have:**—It means that a Commissioner after his election as such shall on acquiring or continuing to have interests of the nature specified in the section be liable to dismissal and fine.

**Directly or indirectly, by himself or his partner.** These words were taken from sec. 12 of the English Act 45 & 46 Vict. c. 50.

The word "indirectly" includes partnerships and all other indirect connections.

**Any share or interest in any contract or employment with, by or on behalf of the Commissioners:**—These words are taken from sec. 12 of the English Act 45 & 46 Vict. c. 50.

"Under the English decisions a person has been held to be disqualified who contracted to bind the books and documents of a corporation. *Reg. vrs. Francis* (1852), 21 L.J.Q.B. 304; who supplied small quantities of lime to Commissioners on credit. *Nicholson vrs. Fields* (1862), 31 L.J., Ex. 288; who supplied men and horses at the request of the local board's surveyor and received payment from the board. *Fletcher vrs. Hudson* (1881), 51, L.J.Q.B. 48; or who was a chemist to a corporation, and supplied a member of the fire brigade with a small quantity of oil on behalf of the Council, *Nell vrs. Longbottom* (1894), 1. Q. B. 767." J. Pargiter's B. M. Act, p. 85.

The section as it is worded means that a Commissioner after his election if he acquires or continues to have any share or interest in any contract or employment under the Commissioners he is disqualified from continuing in the office and is also criminally liable. Questions sometime arise if before an election a person has some interest of the nature specified in the section whether he is eligible for election as a Commissioner? The disqualifications will render the person, if elected, from continuing in office, so the section seems to imply that a person who is disqualified under this section must be *ipso facto* disqualified for election as a Commissioner, unless the disqualifications have been removed at the time of election. See 47 I. C. 169 cited below.

**Holds any office of profit under the Commissioners.** The plff.-appellant who was a teacher in the Municipal school was a voter in one of the wards of the Naihaty Municipality. He offered himself as a candidate for election as a Municipal Commissioner in a ward, where there were 2 other candidates and two vacancies. The Chairman thought that the plaintiff was not eligible for election under rule 13 of the Election Rules read along with sec. 57 of the B. M. Act, because he held an "office of profit" under the municipality and referred the matter to the decision of the District Magistrate. The District Magistrate supported the view of the Chairman and rejected the nomination paper of the candidate. The plaintiff dissatisfied with the action of the Chairman brought a suit for a declaration that the cancellation of his candidature was *ultra vires* and illegal with other prayers. The suit was dismissed by both the trial and appellate Courts and it was held by the High Court in second appeal that a person who is dis-

qualified under sec. 57 of the Bengal Municipal Act is *ipso facto* disqualified for election as a Municipal Commissioner. A person who held and still holds an office of profit under the Commissioners of a municipality such as a teachership in a Municipal School, is not qualified to be elected as a Commissioner. Rule 13 of the Election Rules means that only those persons should be included in the list of candidates who are qualified to be elected. *Lakshmi Kanat De vrs. Chairman of the Naihaty Municipality*, 47 I. C. 169.

**Shall thereby become disqualified.** The mere fact that a Commissioner acquires or continues to have any share or interest in any contract, etc., at once disqualifies him from continuing in office unless he comes within the provisos.

The Local Government may take action for the removal of the Commissioners under sec. 35 cl. (2) (c); but the mere fact of a Commissioner continuing or acquiring any share or interest in any contract or employment under the municipality without the previous sanction of the Local Government disqualifies him from continuing in office and renders himself criminally liable.

**Shall be liable to fine.** The prosecution would apparently come within the provisions of sec. 375 and must be instituted within 6 months. The fines will be recovered as fines under the Criminal Procedure Code.

**Proviso:**—These provisos are the same as the provisos in the cor. sec. 57 of B. M. Act. "The sub-clauses relate only to the first class of disqualifications, *viz.*, having any interest or share in a contract with the Commissioners; they mitigate the inconveniences which would be caused by the literal application of those disqualifying words in cases where there could be little danger to the interests of the public, and any danger is guarded against by the last clause." J. Pargiter's B. M. Act, p. 87.

The last para of the section relates to a Commissioner whose case comes within the provisos. His share or interest does not disqualify him generally but it is enjoined that he shall not act or take part in the proceedings in which those matters in which he is interested are discussed.

**Act as a Commissioner.** He shall not vote in it or partake in the deliberations. See sec. 56 and notes thereto in this connection.

Commissioners disqualified from voting on certain questions.

**56. A Commissioner or member of a Committee shall not vote on any matter affecting his own conduct or pecuniary interest, or on any question which regards exclusively the assessment of himself, or the valuation of any property in respect of which he is directly or**



**indirectly in any way interested, or of any property of or for which he is manager or agent, or his liability to any tax.**

### NOTES.

The section corresponds to sec. 58 of B. M. Act. This section together with the proviso to sec. 55 covers all cases in which a Commissioner may be personally interested in any matter concerning a municipality. He is not to vote in a meeting on any matter affecting his own conduct, pecuniary interest or assessment or valuation of his own holding or holdings or with which he has any direct or indirect concern.

### VALIDITY OF ACTS AND PROCEEDINGS.

Presumption and savings.

**57. (1) No act of the Commissioners or of a Committee or Joint-Committee shall be deemed to be invalid only by reason of the existence of a vacancy in any such body.**

**(2) Accidental omission to serve notice of a meeting on any Commissioner or member of a Committee or Joint-Committee shall not affect the validity of any such meeting.**

### NOTES.

This section corresponds to sec. 38 (3) of B. M. Act. See also notes to sec. 47 *ante*. The general rule is that notice must be served on every Commissioner and this clause only provides that accidental (as opposed to intentional) omissions shall not invalidate a meeting.

The Bombay District Municipal Act (Act VII of 1873) sec. 11 cl. (1) & 22 require that a notice of a meeting to impose a house-tax in a town must be served on all the Commissioners and a notice specifying the business to be transacted therein had to be posted at the *kutchery* and the resolution had to be sanctioned by Government. In a suit by the plaintiffs for refund of a sum alleged to have been illegally levied from him as rate, it was held that the directions in sec. 11 clause (1) as to giving of notice was not directory but obligatory; and notice to all the Commissioners of a meeting being a material part of the machinery provided by the Act for imposing a legal tax was a condition precedent to the validity of the tax. Consequently the resolution come to in a meeting of which notice was not served on 3 Commissioners was not legal and whether sanctioned by the Government or not it always retained its inherent defect. *Joshi Kalidas Shivaram vrs. Dakor Town Municipality*, 7 Bombay 890. But under this section if the non-service was due to an accident, that fact alone will not invalidate the meeting.

sec. 55

The presumption is in favour of the view that the municipality has used the regular procedure and that common course of business has been followed in any particular case.

A defendant who in answer to a claim for arrears of taxes by a Bombay District Municipality alleged that the taxes were illegal (1) because no notice had been given him under sec. 57 (Bombay Act II of 1884), (2) because no notice had been issued by the municipality to the Commissioners under sec. 11 of Bombay Act VI of 1873, must prove the defence and in the absence of such proof the Court will presume that the municipality has issued the regular procedure and that the common course of business has been followed in the particular case. *The Municipality of Sholapur vrs. Sholapur Spinning and Weaving Company, Ltd.*, 20 Bombay 732.

When an extraordinary meeting of the Commissioners was held without serving a notice thereof on one of the Commissioners who was in England it was held that there was a technical breach of the 2 days rule regulating extraordinary meetings of the Commissioners, but as it was not shown that this breach materially affected the election it could not be set aside on such a ground. *Bhuban Mohan Basak vrs. Dacca Municipality*, 31, C.W.N. 926.

**Notice:**—Notices of meeting must state the date, time, place of the meeting and the most important fact, viz., the business to be transacted in the meeting. The general rule is that when a notice states the particular business to be transacted at a meeting no other business can be taken up at that meeting unless all the Commissioners present give their consent to it and that matter in order to be binding on the Commissioners must be confirmed at the next ordinary meeting. See Rules 1 to 6 and Rule 7 as to how the service is to be effected. Model Rules (Appendix). Section 43 also contemplates notices to inform Commissioners of the fact that there would be no meeting on a date fixed for monthly meetings when there is no business to be transacted therein.

### CHAPTER III

## MUNICIPAL PROPERTY AND FINANCE.

### MUNICIPAL PROPERTY.

Municipal property. **58. All property within the municipality of the nature hereinafter in this section specified, other**

**than private property or property maintained by Government or another local authority, shall vest in and belong to the Commissioners, and shall,**

with all other property of what nature or kind soever which may become vested in the Commissioners, be under their direction, management and control, that is to say—

(a) all roads, including the soil, the pavements, stones and other materials thereof, and all drains, bridges, trees, erections, materials, implements and other things provided for such roads;

(b) all channels, water-courses, springs, tanks, ghats, reservoirs, cisterns, wells, aqueducts, conduits, tunnels, pipes, pumps and other water-works whether made, laid or erected at the cost of the Commissioners or otherwise, and all bridges, buildings, engines, works, materials and things connected therewith, or appertaining thereto, and also any adjacent land appertaining to any such tank;

(c) all drains, and all works, materials and things appertaining thereto, and other conservancy works;

(d) all sewage, rubbish and offensive matter collected by the Commissioners from roads, latrines, urinals, sewers, cesspools and other places;

(e) all lamps, lamp-posts and apparatus connected therewith or appertaining thereto; and

(f) all buildings erected by Commissioners and all land, buildings or other property transferred to the Commissioners by Government or acquired by gift, purchase or otherwise for local public purposes.

#### NOTES.

The section corresponds to sec. 30 of B. M. Act.

“ In the Bengal Act the declaration as to what property is vested in the Commissioners are scattered in the various parts of the Act. They are gathered in one clause.” Notes on Clauses p. 32.

This section gives an exhaustive list of all the properties which are, or may become vested in the Commissioners by any means whatever.

**Other than private property or property maintained by Government etc.** The words used in the corresponding section of the B. M. Act were “ not being private property and not being maintained by Government or at the public expense.” For the words “ not being ” the words “ other than ” and for “ and ” “ or ” have been substituted in this Act. The true effect of the words “ not being private property and not being maintained by Government or at the public expense ” was considered in Chairman of the Howrah Municipality *vs.* Khetra Mohan Mitra, 33 Cal. 1290

(p. 1304) and it was held that the word "and" in the expression was to be taken distributively and not collectively. To remove any doubts in the construction of the word "or" has been used in the present section.

The words "not being private property and not being maintained by Government or at the public expense" in sec. 30 of B. M. Act refers only to bridges, tanks, etc., and not to the words "all roads, including the soil" *Kumud Bandho Das vrs. Kishori Lal*, 9 I.C. 562.

**"All other property of what nature or etc."**—these would include lands which have been acquired by the municipality under the Land Acquisition Act for the construction of bridges, tanks, etc., as set out in this section they vest absolutely in the municipality and are its property in the fullest sense of the word.

**Vest in**—see last portions of the notes to this section.

An instance of a road not vested in the municipality although running through it is the Grand Trunk Road which is maintained by Government and not by any municipality.

**All roads, including the soil:**—"road" is defined in sec. 3 cl. (24) see notes to the section.

"The single word 'road' does not appear to be an English legal term at all. It finds no mention in Blackstone who speaks only of ways, highways or turnpikes."

"Roads in England are highways, which under the Highway Act of 1835, means all roads, bridges not being County bridges, roads, carriageways, cartways, horseways, bridleways, footways, causeways, whenchways and pavements and such of them as under Common Law are highways also, i.e., a way over which all members of the public are entitled to pass and repass."

"Highways are of two classes.—Main Roads and ordinary highways. "Main roads include turnpike Roads, there are also streets." J. Pargiter's B. M. Act, page 50.

**Space under the surface.** "But though the surface only of a highway rests in a Local Authority, the Courts have been obliged to enlarge its meaning, so as to give the Local Authorities a limited right to the stratum of sub-soil immediately below the surface. Thus it was held in *Coverdale vrs. Charlton* (1878), L.R.4, Q.B.D. 104, though the word "street" meant the whole of the street surface, yet it comprehended more than that, that is, it include also so much depth below the surface, as was essential to its making, maintaining, occupation and exclusive possession of the street for the use of the public and as the local board might require for

the doing of all those things that are commonly done in, or under the streets; and to that extent the Board had a property in the street." J. Pargiter's B. M. Act, p. 51.

**Space above the surface.** "The property of the authority does not extend further than is necessary for the maintenance and use of the road as such. It cannot therefore interfere with telephone or lighting wires. Re Telephone wires—See Wandsworth Board of Works *vs.* United Telephone Co. (1884), 13 Q.B.D., 904, C.A." J. Pargiter's B. M. Act, p. 51.

The word "street" in sec. 17 of the Bombay District Municipal Act (VI of 1872) means and includes not merely the surface of the ground, but so much above and below it as is requisite or appropriate for the preservation of the street for the usual and intended purposes. Nagar Valab Narsi *vs.* The Municipality of Dhandhuka, 12 Bom. 490.

"Road" as defined in sec. 32 of Act V of 1876 Bengal Municipal Act was held not to mean everything above and below the road; and further looking at the case of The Vestry of St. Mary, Newington *vs.* Jacobs L. R. 7 Q. B. 47 that the subsoil did not belong to the municipality. Chairman Naihaty Municipality *vs.* Kishori Lal Goswami, 13 Cal. 171.

In suit for recovery of some lands which formed a portion of a highway it was held that the land was either a highway or waste land adjoining it and there is a presumption that such land belongs to the owners of the soil of the adjoining land. Sec 38 of the N. W. P and Oudh Municipalities Act was not intended to deprive persons of any private right of property they might have in the land used as a public highway, or to confer such right on the municipality nor has the section any such effect. The plaintiff, as joint owners, now that the land is no longer a public highway have a good cause of action against the defendant. Nihal Chand *vs.* Azmat Ali Khan, 7 All 362.

Bengal Act III of 1864 has been superseded by Bengal Act V of 1876 and in the corresponding section in the latter Act the word "road" has been used instead of "public highway." The word "road" as used in that Act (sec. 10) and in Act XV of 1873 (applicable to the North-Western Provinces) does not include the sub-soil: that the sub-soil does not belong to the municipality, and that Act is not intended to deprive any person of any private right of property that he may have in the land used as a public road, or to vest that right in the municipality; and that when the land is no longer required for a public road, the owner is entitled to have it. Madhu Sudan Kundu *vs.* Promotho Nath Roy, 20 Cal. 792. at p. 798.

This was the law in Bengal previous to the addition of the word "including the soil" in 1894 after the word "roads" in sec. 30 of B. M. Act. The present section has adopted the same words as in the amended sec. 30 of B. M. Act and under it the Commissioners appear to be constituted the owners of the roads and all the soil beneath, i.e., of the "land" occupied by the roads in the same way as land-owners own the land they hold.

As the word "road" in its definition includes any bridge, footway, lane, etc. [sec. 3 cl. (24)] so the word "bridge" has been omitted before the clause "including the soil" in this section clause (a).

Under this section the soil underneath the bridges, etc., vest in the municipalities.

The use of the words "all drains" "bridges" in the latter part of clause (a) seems to contemplate such drains, bridges which do not come within the definition of road in sec. 3 (24).

In the Original Bill of 1921 the words used in clause (a) were "all public roads, etc.," the word 'public' has been deleted on the recommendation of the Select Committee.

**Roads are of two classes:**—(1) roads which vest in the municipality either as being public roads or roads which were private property before but taken over by the municipality by an agreement with the owners (sec. 61), (2) roads which do not vest in the Commissioners but are under their control only, as for example private pathways.

Under sec. 30 of B. M. Act as amended by recent legislation, private pathways do not vest in the municipality. The municipality may however, have control over such a pathway, if the public have a right to go over it, as provided for in section 31 of the Bengal Municipal Act (sec. 61). The difference between roads vested in the municipality and other roads is that in the former case the municipality is responsible for lighting, watering, sewerage and clearing the roads, and in the other case the municipality has only the power of control to prevent the road from becoming a nuisance or the rights of the public from being interfered with. *Chairman, Howrah Municipality vs. Haridas Datta*, 43 Cal. 130.

The term "road" in sec. 217 of B. M. Act is not limited to roads vested in the Municipal Commissioners. Road includes a path over which the public have a right of way. In *re Ramchandra Ghosh vs. Bally Municipality*, 17 Cal. 684. (See also 15 C.W.N. 111 notes portion) in this connection.

"A public way may pass through private property; in that case it must have at each end a public terminus, the terminus may be sufficient

although it has not in the ordinary sense an exit; it may be a *cul-de-sac*. But a mere private place not admitting of a passage through or beyond it cannot form the terminus of a public way. *Young vs. Cuthbertson* (1851), 1 Macq. H. Cases 455." J. Pargiter's B. M. Act, p. 18.

**Drains, bridges, trees, erections, etc.:**—the corresponding words in the B. M. Act are "bridges, tanks, ghats, wells, channels and drains."

"Drain" is defined in sec. 3 cl. (6) and "bridges" are included within the definition of "road" sec. 3 cl. (24) and so the soil under the drain and bridges also vest in the municipality.

**Clause (b):**—This clause lays down that all channels, water-courses, springs, tanks, ghats, reservoirs, cisterns, wells, aqueducts, conduits, tunnels, pipes, pumps and other water-works whether constructed at the expense of the Commissioners or formed naturally and all bridges, buildings, engines, works, materials and things connected therewith and also the adjacent land appertaining to any such tank which are not private properties or properties of Government or any other local authority vest in the Municipality and are under its sole direction, management and control.

This clause deals with all kinds of water-supply and water drainage.

**"Channel"** means "a small channel at the side of a road, street and the like for carrying away water." Imperial Dictionary.

**Water course:**—"a channel or canal made for the conveyance of water." Imp. Dictionary.

**Ghat:**—from the context the word seems to mean only bathing, mooring and ferry ghats.

The word "ghat" ordinarily means a flight of steps made of wood, brick, stone, iron, etc., for access to the water of a tank or a river; it also means the place on a river bank (or on a tank) where the people ordinarily bathe or where boats are moored for purposes of a ferry or otherwise or which is used for the purpose of loading or unloading goods. The word *ghat* does not include a tract of land used as a burning ground. It may be observed that the term "burning ground" is used in various sections of the Bengal Municipal Act. See for instance secs. 87 (secs. 83 and 89) 98 [sec. 84 (1) (b) (c)] and 254 to 256 (secs. 248, 249 and 252). On the other hand secs. 347 (sec. 345) and 348 (sec. 346) use the word "burning ghat." Upon an examination of all the sections it appears that the word *ghat* in sec. 30 (sec. 58) was not intended to include a burning ground. *Chairman of Howrah Municipality vs. Khetra Krishna Mitter*, 38 Cal. 1290 (at p. 1303)=10 C.W.N. 1052.

**Aqueducts:**—"a conduit or channel for conveying water from one place to another, more particularly applied to structures for conveying water from distant sources for the supply of large cities." Imperial Dict.

**Conduits:**—a pipe, tube or other channel for the conveyance of water. Imperial Dictionary.

**Tunnel:**—a subterranean passage cut through a hill or any eminence or under a river, town, etc., to carry a canal, a road or a railway in an advantageous course. Imperial Dictionary.

**Water-works:**—(a) A term commonly applied to the aggregate of constructions and appliances for the collection, preservation and distribution of water for domestic purposes, for the working of machinery or the like for the use of communities (b) the structure or structures in which a spout, jet or shower of water is produced; an ornamental fountain or fountains; also an exhibition or exhibitions of the play of fountains. Imperial Dict.

This clause seems to suggest that the soil underneath the channels water-courses do not vest in the municipality but it has the right to uninterrupted user of the channel and prevent obstructions and encroachments to them.

**Clause (c):**—"Drains" are included in the definition of "road," see sec. 3 (24); the specific mention of all drains in this clause seem to contemplate cases of drains not covered or included in the definition of roads in clause (a).

A public drain always vests in and belongs to the Municipal Commissioners. So long as it continues to be a public drain any private rights in the subsoil must remain dormant and in abeyance and there remains nothing more than a very remote and problemetical chance of the drain ceasing to be connected with the drainage of the town. Chairman of the Municipal Commissioners of Howrah *vs.* John King & Co. Unreported Original Appeal No. 540 of 1908 decided by the Calcutta. H. C. on 25th July, 1910.

**Vest in:**—Bengal Act III of 1884 which vested public highways in Municipal Commissioners for the purposes of the Act did not by so vesting them give the power to the Municipal Commissioners to stop up or direct such public highways. In regard to highways which are the property of the Municipal Commissioners the only powers which they have over them is to make, repair and keep properly cleansed such highways and to do such things upon them as are necessary for conservancy. If any more extensive works were necessary then the consent of the Lieutenant-Governor must be



taken and even with such consent there was no power to stop up a road. *Empress on the Prosecution of Jodoonath Ghosh vrs. Brojo Nath Dey*, 2 Cal. 425. See also *Nihal Chand vrs. Azmat Ali Khan*, 7 All. 362 in this connection.

The right of a Municipal Council to the street and the drains is not a mere right of easement but is a special right of property in the site previously unknown to law but created by statute. *Basaweswaraswami vrs. The Bellary Municipal Council and the Secretary of State for India in Council*. 38 Mad. 6.

In *Kalil Rahaman vrs. Dacca District Board*, 11 I.C. 28. J. Coxe held that the Municipal Commissioners had power to abandon an old road for a new one, to exchange under sec. 34 a piece of road land for another necessary for the improvement of a road.

The right of a Municipality as to the roads is governed by sec. 30 by which the property in roads is vested in the Commissioners for the purposes given in the Act. Under sec. 30 municipality has no right to lease out its right for the purpose of carrying on shops or exposing goods for sale. There is no right to collect rent, toll or any tax unless there is a contract creating the relationship of landlord and tenant between the parties. *Dhunmun Choudhury vrs. K. E. 3 P.L.T. 339=122 Patna 286.* (A.I.R.)

Power to exclude road, bridge or drain from Act.

**59. The Local Government may, from time to time, by notification, exclude any road, bridge, or drain from the operation of this Act or of any specified section of this Act and may cancel such notification wholly or in part:**

**Provided that if the cost of the construction of the work shall have been paid from the municipal fund such work shall not be excluded from the operation of this Act, or of any specified section of this Act, without the consent of the Commissioners at a meeting.**

#### NOTES.

The section corresponds to sec. 30 cl. (2) of B. M. Act.

This section empowers the Local Government to exclude by notification any road, bridge or drain from the operation of this Act or of any specified sections of this Act; but if they have been constructed out of the municipal fund they cannot be so excluded without the consent of the Commissioners at a meeting.

The notifications contemplated by this section can be made only in respect of roads which are not private properties or properties maintained by

Government or another local authority, *i.e.*, roads, bridges or drain which under sec. 58 vest in the municipality and would but for this notification be vested in it. No notification being necessary for such roads as are private properties, etc., as under sec. 58 they never vest in the municipality.

Transfer of certain public institutions to the Commissioners.

**58. (1) Any hospital, dispensary, school, rest-house, ghat or market within a municipality, not being private property or the property of a religious institution or society, and all medicines, furniture and other articles appurtenant thereto, not being such property, may by order of the Local Government duly published on the spot, be vested in the Commissioners of the municipality; and thereupon all endowments or funds belonging thereto shall be transferred to, and vested in, such Commissioners as trustees for the purposes to which such endowments and funds were lawfully applicable at the time of such transfer:**

**Provided that no such order shall be published until one month after notice of the intention to transfer such property shall have been published in the Gazette, and within the municipality in the vernacular language of the district.**

**(2) If the Commissioners at a meeting held within one month after publication of the notice mentioned in sub-section (1), object to the transfer to themselves of any hospital, dispensary, school, rest-house, ghat or market on the ground that their funds cannot bear the charge, then such transfer shall not be made save under such conditions as the Commissioners at a meeting may agree to accept.**

## NOTES.

Clause (1) corresponds to sec. 32 and clause (2) corresponds to sec. 33 of B. M. Act.

The Local Government may by notification published on the spot transfer any hospital, dispensary, school, rest-house, ghat or market including the medicines, furniture, etc., therein situated within a municipality not being private property or the property of a religious institution or society to the municipality and such hospitals, etc., shall vest in the Commissioners after such notifications and thereafter they shall hold them as trustees for the purposes for which they existed.

**Sub-section 2.** It is open to the Commissioners at meeting to object to the transfer to themselves of any hospital, dispensary, etc., on the

ground of their inability to bear their expenses and in that case the transfer can be made under conditions which the Commissioners may agree to accept.

**61. The Commissioners at a meeting may agree with the person in whom the property in any road, bridge, tank, ghat, well, channel or drain is vested to take over the property therein or the control thereof, and after such agreement may declare by notice in writing, put up thereon or near thereto, that such road, bridge, tank, ghat, well, channel or drain has been transferred to the Commissioners.**

Thereupon the property therein, or the control thereof, as the case may be, shall vest in the Commissioners, and such road, bridge, tank, ghat, well, channel or drain shall thenceforth be required and maintained out of the Municipal fund.

#### NOTES.

The section corresponds to sec. 31 of B. M. Act.

This section refers to private roads, bridges, etc., the Commissioners may take them over on such terms as may be agreed upon in each case. The former section (sec. 60) relates to the transfer of public institutions and this section relates to the transfer of private ones to the Municipality.

After the roads, bridges, etc., are taken over by the Municipality the property in them vests in the Municipality, sec. 61 will have to be resorted to only when the roads, bridges, etc., are such as do not by virtue of sec. 58 vest in the Municipality.

Under sec. 80 of the B. M. Act as amended by recent legislation private pathways do not vest in the municipality. The municipality may however, have control over such a pathway, if the public have a right to go over it as provided for in sec. 31 of the B. M. Act. The difference between roads vested in the Municipality and other roads is that in the former case the municipality is responsible for lighting, watering, sewerage and clearing the roads and in the other case, the municipality has only the power of control to prevent the roads from becoming a nuisance, or the rights of the public therein from being interfered with. Chairman Howrah Municipality *vs.* Haridas Dutta, 43 Calcutta 180.

See sec. 227 as to the taking over and putting tanks, wells, streams, channels, etc., in order for the supply of drinking water or water for bathing or washing purposes.

## POWER TO PURCHASE, LEASE AND SELL LANDS

Power to purchase,  
lease and sell lands.

**62. The Commissioners at a meeting may purchase or take on lease any land for the purposes of this Act, and may sell, lease, exchange or otherwise dispose of any land not required for such purposes or which has been acquired by them for the purpose of being leased.**

## NOTES.

The section corresponds to sec. 34 of B. M. Act.

“ Section 34 of the Bengal Act allows the Commissioners to sell, lease, exchange or otherwise dispose of land only when it is not required for the purposes of this Act. In case of town-planning operations or of a scheme for the erection of model dwelling houses it may be essential to lease, dispose of land acquired for those purposes when those purposes have been accomplished.” Notes and Clauses para. 33.

This section deals with the purchase and sale of land by private treaty and the next following section deals with compulsory purchase.

**For the purposes of this Act:**—This is the only condition imposed on the powers of the Commissioners under this section, otherwise their powers are unrestricted. When lands are being purchased privately or at an auction sale under section 369 it must be clear that the land is being taken for the purposes of this Act (as laid down in sec. 68) and the purchase is made for such purposes and similarly when lands are not required for the purposes of this Act or when they had been acquired for the purposes of being leased, they can be sold, leased, exchanged or otherwise disposed of by the Commissioners at a meeting. Thus surplus lands can be leased out on good rentals. See notes to the next section as to when lands can be acquired by the Commissioners for the purpose of being leased.

Municipal Corporations hold all properties in a fiduciary capacity, so it can alienate only in cases sanctioned by the Statute. So when the statute requires that a lease or sale shall be made in a particular manner the provisions of the statute must be complied with, otherwise the alienations will be null and void and not binding on the Commissioners. A municipal corporation cannot mortgage its property in as much as it is neither mentioned in the statute nor is it an inherent power in municipal corporations. Brice on *Ultra Vires*, page 113.

**Lease.** The purchase or lease must be under seal and the provisions of sec. 37 (sec. 64) must be complied with. Sec. 34 of B. M. Act (sec. 62) must be read along with sec. 37 (sec. 64) of the said Act. Sec. 34 refers no doubt to certain classes of contracts and then sec. 37 applies to all contracts

of whatever nature and provides that if these contracts involve a value exceeding Rs. 500 they shall be executed in accordance with the terms of that section. In a suit by the Chairman of a Municipality to set aside a permanent lease it was found that the contract was sanctioned by the Commissioners at a meeting and that it involved a value exceeding Rs. 500, but that the kabuliyat executed on behalf of the municipality was signed by the Chairman and although two of the Commissioners witnessed it they did not sign as contracting parties and furthermore it was not sealed with the seal of the Commissioner, it was held that the Contract was not binding on the Commissioners. *Chairman South Barrackpore Municipality vs. Amulya Nath Chatterji*, 84 Calcutta 1080 (at p. 1082)=12 C.W.N. 50.

The Chairman of a municipality has no power under section 44 of the B. M. Act to sell or lease a land belonging to the municipality. Only Commissioners at a meeting can do so. *Jaganath Saha vs. The Chairman on behalf of the Commissioners of Berhampur Municipality*, 9 C.L.J. 286.

Under sec. 556 of the Calcutta Municipal Act (under which similar powers were given to the Calcutta Corporation) it was held that the Corporation of Calcutta has the power to lease any property vested in them on any terms they think fit without calling for any tenders in that behalf. In the matter of *Jogendra Nath Mukuti and others*, 13 C.W.N. 129.

**Purchase.** Government has instructed municipalities that they may under this section buy a holding which is put up for sale under sec. 361 (sec. 369) provided it is required for the purposes of this Act and they make the purchase for such purposes. Order (Munl.) No. 2250 of 6th August, 1901.

**Rights of other persons.** In disposing of lands not required for the purposes of this Act the Commissioners must see that they do not infringe any rights which other persons may possess over them.

By sec. 38 of the N. W. P. and Oudh Municipalities Act the property in all public highways is vested in the Committee and by sec. 27 the Committee can, with the sanction of the Local Government sell any portion of land referred to in that section, which is not required for the purposes of the Act, and shall keep roads in repairs, and may do all acts and things necessary for purposes of general utility. But there is nothing in the Act which debars the Civil Courts from entertaining suits and giving reliefs in respect of any civil right which may be shewn to have been infringed through the exercise by the municipality of the powers under this Act; on the contrary provision is made for such suits. In the case referred to the land belonged to and formed a part of the old public road and adjoined the plaintiff's premises and was sold by the municipality to the defendant, but that a sufficient portion of land

remained in use as the public road and the defendant had appropriated to his own exclusive use that portion which he had purchased and which lay between the plaintiff's premises and the present public road and interfered with the right of way and prevented approach as of old on his (plaintiff's) part from his premises to what now constituted the public road and also closed a drain existing on the land and it was held that the Municipality could not have thus dealt with the highway to the special injury of the plaintiff. In closing a portion of it they would have been bound to provide adequately for his (plaintiff) drainage and his access to the high-way which they had substituted, indeed it is not clear that they had any intention of doing otherwise and the defendant can do no less. In that case it was ordered that a cart road connecting the plaintiff's premises with the new road should be reserved across the land and the plaintiff's drainage should not be interfered with. *Fazal Haq vrs. Maha Chand and another*, 1 All. 557.

#### POWER TO ACQUIRE PROPERTY.

##### Acquisition of land.

**63. When any land is required for the purposes of this Act, or for the recoupment of the cost of carrying out any such purpose, the Local Government may, at the request of the Commissioners at a meeting, proceed to acquire it under the provisions of the Land Acquisition Act, 1894; and on payment by the Commissioners of the compensation awarded under that Act, and of any other charges incurred in acquiring the land, the land shall vest in the Commissioners.**

#### NOTES.

The section corresponds to sec. 35 of B. M. Act. "The words "or for the recoupment of the cost of carrying out any such purpose" have been inserted in this clause." Notes on clauses p. 34.

These words do not find a place in the corresponding section of the B. M. Act.

**Recoupment of the cost.** Under the corresponding section of the B. M. Act land could be acquired only when required for the purposes of the Act; but under this section land can be acquired not only when required for the purposes of this Act but also for recoupment of the cost of carrying out any such purpose. This power evidently means this, that an area in excess of what is actually required for any purposes of the municipality can be acquired and after the constructions are finished the surplus can be settled on terms that will recoup the costs incurred in opening the road. Under the old Act it seemed that only so much as was necessary for the purposes of the Municipality could be acquired and no more. This power is useful in town planning and schemes for opening of new roads.

In this connection an interpretation of sec. 42 of the Calcutta Improvement Act (a similar section) may be usefully referred to see *The Trustees for the Improvement of Calcutta vs. Chandra Kanta Ghosh*, 24 C.W.N. 881 (P. C.)

Where land was included in the area of a street improvement scheme not because it was actually required for the widening of the road but because in the opinion of the Board, it would pay them to acquire it and sell it again, the profit going in ease of the burden of the public expenditure held that the Board had authority to acquire the land under sec. 42 of the Calcutta Improvement Act as the land would be "affected" by the execution of the scheme within the meaning of the section. Land is said to be "affected" by the execution of a scheme (using the word in its ordinary sense) whenever its value is thereby enhanced or diminished and there is no reason either in the general purpose of the Act or the special context that the word "affected" in sec. 42 should not be construed in its ordinary sense. The Board being authorised under sec. 42 to acquire land affected in value by the execution of a scheme in order to provide funds in ease of the public burden, the acquisition of such land is directly within the purpose of the Act and the powers of compulsory acquisition are clearly applicable thereto. The Board has ample authority under sec. 81 of the Act to hold or dispose of land acquired under sec. 42 and not required for the execution of the street scheme. *The Trustees for the Improvement of Calcutta vs. Chandrakanto Ghosh*, 24 C.W.N. 881 P. C. (See also in this connection 22 C.W.N. 1 the Full Bench decision which over-ruled the decision in 21 C.W.N. 8).

When the Local Government is asked to acquire land for the municipality, an officer is deputed to report on the necessity and usefulness of the proposal. Under sec. 40 of Act I of 1894 (Land Acquisition Act) the Local Government shall only consent to acquire land when satisfied by enquiry (a) that such acquisition is needed for the construction of some work and (b) that such work is likely to prove useful to the public. The Corporation has to satisfy the Local Government as to the reality and *bona fides* of the allegations made in the application. The only parties concerned in this enquiry are the Government on the one side which has to be satisfied and the Corporation which has to furnish materials for satisfying the Local Government. There is no provision in this section that any other person shall be summoned or required to attend at the enquiry contemplated. It is contrary to the policy of the Act to hold that at an enquiry under sec. 40 the person whose land is intended to be acquired should have an opportunity to appear and object. Sec. 40 constitutes the Government, as the

custodian of the public interest, the sole judge of the two facts mentioned, namely, whether the lands are required for the construction of some work and secondly, whether that work will prove useful to the public.

The owner of land which it is proposed to acquire under the Land Acquisition Act is not entitled to notice of the enquiry provided for by sec. 40 of the Act which is in no sense a litigious proceeding. *Ezra vrs. Secretary of State for India*, 32 Calcutta 605 (P. C.)=9 C.W.N. 454.

When the Local Government is satisfied under sec. 40 of the Land Acquisition Act that a land is so required, it issues a declaration and a notification is published in the Gazette under sec. 6 of the Act that the land is so required and under sub-sec. 3 of that section the declaration is conclusive evidence that the land is needed for a public purpose. See *Ezra vrs. Secretary of State for India*, 32 Calcutta 605 and 30 Calcutta 36.

Lands already the property of Government cannot be the subject of acquisition by Government. If the municipality requires such land it must apply to the Government for the transfer of the same.

It is a contradiction in terms to speak of the Collector as seeking acquisition of land when he asserts that the land is his own and that no other person has any interest in it. *Imad Ali Khan vrs. Collector of Fara-kabad*, 7 Allahabad 817. See also *Government of Bombay vrs. Isuf Ali Salebhai*, 34 Bombay 618.

**For the purposes of this Act.**—The Commissioners would have to show that the purpose of the acquisition is one of the purposes authorised by the Act (sec. 68) and that purpose would have to be stated in the declaration under sec. 6 of the Land Acquisition Act.

Where a District Municipality purchased through Government a narrow strip of land at the entrance of a private street for the purpose of widening the street in order to facilitate the effective use of fire engines, held that the acquisition of land for such a purpose was within the powers of the municipality as it was conducive to the promotion of public health, safety and convenience and that the Civil Court had no jurisdiction to restrain the municipality from exercising such powers. Although the declaration contained only one public purpose, *viz.*, "widening of road" still it was open to the defendant municipality to show that the purpose stated in the declaration was not the only purpose for which the land was required or rather the achievement of that purpose would render it possible to carry out the avowed purposes of the Act. The Court had power to see whether the acquisition of the land is for a purpose sanctioned by the Act. *Sastri Ramchandra vrs. The Ahmedabad Municipality*, 24 Bombay 600,



In this connection we can conveniently refer to the interpretation put by their Lordships of the Privy Council on a similar section of the Calcutta Improvement Act. In that case the respondents sued for a declaration that the appellants had no power under the provisions of the road improvement scheme framed under the Calcutta Improvement Act 1911, to acquire land owned by him and both Courts held that the holding in question was not required for the road widening scheme and that its acquisition for any other purpose was not warranted under any of the provisions of the said Act and it was held by the Privy Council that the publication by the Local Government of a notification that an improvement scheme has been sanctioned (which is conclusive evidence under the Calcutta Improvement Act, 1911, that the scheme has been duly sanctioned) does not affect the right of an owner of land included within the scheme to institute a suit to have it declared that the Board in framing the scheme acted *ultra vires* or that the scheme as sanctioned does not authorise the Board to acquire by compulsion the land in question. The Trustees for the Improvement of Calcutta *vs.* Chandrakanto Ghosh, 24 C.W.N. 881 (P.C.). See also in that case the interpretation of the terms "public purpose" and "carrying out a purpose of the Act" as defined in the Calcutta Municipal Act.

The provision of suitable and decent accommodation for a large number of worshippers who at certain seasons crowd into and about the temple of Kali in a part of the town is in view of the general questions involved of public convenience, proper sanitation and the prevention of danger and disease to the worshippers themselves and the ordinary resident population, "a public purpose" and not the less so because the persons mainly interested would be the worshippers and the dignitaries of the temple. By the construction and maintenance of a Dharmasala the Corporation carried out a purpose of the Act within the meaning of sec. 14 of Act III, B.C. of 1899. Sec. 556 of the Act plainly confers upon the Corporation of Calcutta power to acquire land and buildings which are in the opinion of the Corporation necessary for carrying out any of the purposes of the Act. The exercise by the Corporation of the discretion thus expressly placed with it by secs. 14 and 556 of the Act cannot be questioned in a Civil Court. *Amulya Chandra Bannerji vs. Corporation of Calcutta*, 27 C.W.N., 125 P. C. See also 22 C.W.N. 588.

#### CONTRACTS.

Execution of con- 64. (1) The Commissioners may enter into and  
tracts. perform any contract necessary for the purposes of  
this Act.

**(2) Every contract made on behalf of the Commissioners in respect of any sum exceeding five hundred rupees, or which shall involve a value exceeding five hundred rupees, shall be sanctioned by the Commissioners at a meeting, and shall be in writing, and signed by at least two of the Commissioners, one of whom shall be the Chairman or Vice-Chairman, and shall be sealed with the common seal of the Commissioners.**

**(3) Unless so executed, such contract shall not be binding on the Commissioners.**

### NOTES.

The section cor. to sec. 87 of B. M. Act.

**General conditions regarding contracts:—**“ This section lays down the formalities requisite for the due performance of corporate contracts. Generally speaking Municipal Corporations have power to enter into all contracts necessary for the reasonable and proper discharge of the purposes for which they are constituted and they are as much bound by their contracts as individuals, when the seal is affixed in a manner binding on them. It was the general rule that all the contracts of corporations should be attested by the affixing of their seal, for being impalpable they could speak and act only by their common seal, which expressed the joint assent of all the members. But by reasons of the vast increase of business in modern times it has been found advisable if not absolutely necessary to qualify the rule and to hold that many contracts made by or with corporations are valid though not under seal. Thus contracts relating to matters of trivial and everyday occurrence may be made without sealing; and so also contracts relating to matters, the due performance of which is essential for the attainment of the objects for which the corporation has been created (subject to the five-hundred rupees limit under this section) but statutory requirements must be fulfilled and no exception will be allowed to prevail against such express directions.” J. Pargiter's B. M. Act, p. 61.

**Necessary for the purposes of this Act.** The purposes of this Act are enumerated in sec. 68. The conditions of a valid contract are that it must be for those purposes and that it must be necessary for them.

See also notes to sec. 62 in this connection.

**Conditions laid down by this Act.** The Act lays down special directions regarding municipal contracts. The contract must be for at least one of the purposes mentioned in sec. 68, no formalities are prescribed regarding contracts the value of which are below Rs. 500 and they could ordinarily be made by the Chairman or Vice-Chairman if authorised under secs. 24 and 25 and sealing is not necessary in such cases. If the contract is value at

more than Rs. 500 the formalities required are (1) it must be sanctioned by the Commissioners at a meeting, (2) it must be in writing, (3) and signed by at least two of the Commissioners, one of whom shall be the Chairman or Vice-Chairman, (4) and sealed with the common seal of the Commissioners. These formalities are to be observed by the Commissioners but for the other party to the contract no special formalities are prescribed but the Commissioners are to see that he binds himself to the contract in the ordinary way.

**Contracts that require special formalities.** Contracts above the value of Rs. 500 require special formalities as pointed out above.

Where the Chairman of a Municipality as vendor of immovable properties duly presented a deed of conveyance to the Sub-Registrar for registration and admitted its execution but the other executants namely the Commissioners and the vendee neither admitted execution nor were present either personally or by representatives, assigns or agents before the registering officer and the deed was registered held that the deed of conveyance was not properly executed and the vendee's title was therefore not perfect. If a document executed by several persons, is registered upon the appearance and admission of one of these persons there is clearly no effective registration as regards the other executants who neither appear nor admit execution. In the case of a public corporation which is authorised by statute to execute contracts in a manner specially prescribed by the statute strict compliance therewith is necessary. *Ezikiel and Co. vrs. Ananda Chandra Sen*, 50 Cal. 180=36, C. L. J. 109.

Where in a suit by the Chairman of the municipality to set aside a permanent lease executed by the defendant it was found that the contract was sanctioned by the Commissioners at a meeting and that it involved a value exceeding Rs. 500 but that the *kabuliyat* executed on behalf of the municipality was signed only by the Chairman and although two of the Commissioners witnessed it they did not sign it as contracting parties and furthermore it was not sealed with the seal of the Commissioners held that the contract was not binding on the Commissioners and that sec. 34 of the B. M. Act. must be read along with sec. 37 of the said Act. *Chairman South Barrackpur Municipality vrs. Amulya Nath Chatterji*, 34 Cal. 1030.

A contract purporting to be made by a municipality but not signed by the Chairman or Vice-Chairman and a Councillor as required by sec. 45 of Act IV of 1884 (District Municipal Act, Madras) is not binding on the municipality. When the contract is not so signed the municipality cannot be rendered liable on the ground of executed consideration. *Ramaswamy Chetty vrs. The Municipal Council, Tanjore*, 29 Mad. 360,

An agreement falling within the scope of sec. 45 of the District Municipal Act is invalid if the provisions of the section have not been complied with and is not binding on either of the parties to it. The fact that such an agreement was partially acted upon cannot render it an operative contract. *Raman Chetti vs.* The Municipal Council of Kumbakonam, 30 Mad. 290.

In a suit for damages by the municipality for breach of an executory contract it is open to the defendant to show that it is not binding on him inasmuch as it is not binding on the plaintiff. *The Ahmedabad Municipality vs. Sulemanji Ismailji*, 27 Bom. 618. But in *Abaji Sitaram Modak vs. the Trimbak Municipality*, 28 Bom. 66. Jenkins C. J. held that although a contract by a Corporation must ordinarily be made under seal still when there is that which is known as executed consideration an action will lie though this formality has not been observed. (The English law on the point was applied).

Where upon a settlement of municipal land by the Chairman without the sanction of the Commissioners at a meeting the plaintiff built a house and about 2 years and 4 months after the plaintiff was allowed to construct a drain round the house it was held that the plaintiff was not led to erect the house by the Commissioners' permission to make the drain. The plaintiff had already built the house on the municipal road before constructing the drain and on the facts there could be no estoppel and the municipality could question the lease and direct the demolishing of the house. *Jaganath Saha vs. The Chairman of the Berhampur Municipality*, 9 C.L.J. 286.

**Such contract shall not be binding on the Commissioners:—**The effect of non-compliance with the requirements of sub-sec. (2) of the section is that the Commissioners will not be bound by such a contract, such an objection can be taken only by the municipality. See the case cited below.

In an unreported case of the Patna High Court the facts were these the plaintiff was the lessee of certain municipal market at Puri (being purchasers in auction) and he executed *kabuliyat* in favour of the municipality and paid rents, the auction sale to the plaintiff was sanctioned by the Commissioners at a meeting but no formal lease was executed as required by law; the plaintiff sued certain tenants of the market for ejectment and damages, the lower courts dismissed the plaintiff's claim for ejectment holding that the plaintiff's title was invalid for want of a proper deed; on second appeal their Lordships Jwala Prasad and Bucnill J. J. held against the views of the lower courts and stated the law as follows: "The objection taken is not on behalf of the municipality and in fact the municipality is no party to these suits. On the other hand the plaintiff has executed *kabuliyat* in respect of the leasehold properties in favour of the municipality and those registered

*kabuliyats* the learned munsiff has held are valid and has been acted upon. In other words the plaintiff is bound to pay rents and to conform to the terms of the *kabuliyats*. But according to the munsiff, he himself is not entitled to enforce his right as far as third persons are concerned. The view is not only inequitable and unjust but is also in direct conflict with clause (3) of sec. 84 of the Act; that clause though short is pregnant with meaning. The effect of the non-compliance with clause (2) of the section is that the Commissioners would not be bound by such a contract. That is the view taken in the case of *Akshoy Kumar Chand vs. The Commissioners of Bogra Municipality*, 75 I.C. 506; *E. Singam Iyengar vs. Bodi alias Ananga Naidu*, 72 I. C. 708 and *Jagannath Saha vs. The Chairman on behalf of the Berhampur Municipality*, 9 C.L.J. 286. Those cases were decided upon the special circumstances and because the municipality was not bound by the contracts entered into except upon a strict compliance with the requirements of clause (2). The section is based upon the principle that a corporate body like the municipality is not bound by the acts of the members of that body unless certain formalities are complied with so as to show that the persons acting on behalf of the municipality have authority to do so and to ensure that such authority was duly executed. *Rakhal Das Agarwalla vs. Gouranga Sahu*, Civil Revisions Nos. 49, 52, 54 & 57 of 1925 decided on 1st July 1926 (Cuttack Circuit).

#### THE MUNICIPAL FUND.

##### Municipal Fund.

**65. (1) There shall be constituted for each municipality a fund to be called the municipal fund and there shall be placed to the credit thereof—**

**(a) all sums received by or on behalf of the Commissioners under this Act or otherwise;**

**(b) all fines realised on conviction under the provisions of this Act or the rules or by-laws made thereunder, or under any other Act wherein or whereunder provision is made for the credit of the fine to the municipality; and**

**(c) the balance, if any, standing at the credit of the municipal fund of the municipality at the commencement of this Act.**

**(2) Nothing in this section shall affect any obligation of the Commissioners arising from a trust legally imposed upon or accepted by them.**

#### NOTES.

The section corresponds to sec. 67 of B. M. Act and sec. 114 (1) of U. P. Act II of 1916.

**Clause (a).** Sec. 82 describes the sources from which monies can be realised by or on behalf of the municipality.

**Clause (b).** Fines realised on conviction for breach of any of the provisions of this Act or any rules or by-laws framed under this Act and fines under any other Act which distinctly provides that such fines shall be paid over to the municipality; go to the Municipal Fund.

**Sums transferred to the credit of the municipality.** Although the Police Act does not prescribe that fines under sec. 34 of the Act shall be transferred to the credit of the municipality, Government has ordered that fines imposed under sec. 34 of the Police Act for nuisances committed within municipal limits shall be made over to the respective municipalities. Circ. (Munl.) No. 1 T-M of 6th April 1885 (See Appendix); and that all fines realised under the Bengal Act I of 1869 or India Council Act XI of 1894 (both for the prevention of cruelty to animals) on convictions, obtained otherwise than through agents of the Societies for Prevention of Cruelty to Animals within the limits of the municipalities shall be given to the respective municipalities for five years from 1st April, 1910—Circ. (Munl.) No. 26 M of 22nd March, 1911. (See Appendix).

**Sub-section (2).** “ Provision has been made for cases where, as in Patna City, the Commissioners hold a Trust for town improvement or for any other purpose. The Trust money should be kept apart from the Municipal Fund proper ”. Notes on Clauses p. 35.

All trust monies in the hands of the Municipal Commissioners should be kept separate from the Municipal Fund.

**66. Unless the Local Government otherwise directs, all sums received on account of the municipal fund shall be paid into a Government treasury, or into any bank or branch bank used as a Government treasury in or near to the municipality, and shall be credited to an account to be called the account of the municipality to which they belong :**

**Provided that the Commissioners may invest any moneys not required for immediate use either in Government securities, or in any other form of security which may be approved of by the Local Government.**

#### NOTES.

The section corresponds to sec. 83 of B. M. Act.

The dealings with the Treasury are explained in the Account rules (See Appendix).

Ordinarily all monies of the Municipal Fund are to be kept in Government Treasury; but if the Local Government permits they may be kept elsewhere.

A register must be kept of Government Securities and they may be sent to the Accountant-General for safe custody.

Priority of payments on account of trust, loans and establishment.

**67. Except as is otherwise provided in this Act the Commissioners shall set apart and apply annually out of the municipal fund—**

**(a) firstly, the liabilities and obligations arising from a trust legally imposed upon or accepted by the Commissioners;**

**(b) secondly, such sum as may be required for the repayment of, and the payment of interest on, any loan incurred under the provisions of the Local Authorities Loans Act, 1914;**

**(c) thirdly, such sum as they are by this Act required to provide for payment of the salaries and allowances of their own establishment, including such contributions as are referred to in section 39.**

#### NOTES.

The section corresponds to sec. 68 of B. M. Act and sec. 120 (8) (a) (b) of U. P. Act II of 1916.

Out of the Municipal Fund the liabilities and obligations arising from trusts legally imposed upon or accepted by the Commissioners should be discharged first of all, next comes the item of repayment of principal or interest on loans incurred by the Commissioners, thirdly comes the establishment charges. The other purposes on which the Municipal Fund can be spent are laid down in sec. 68.

**Clause (b) :—**“The application of the fund under this sub-clause should not be confined as in clause (a) of sec. 68 of the Bengal Act to the payment only of interest on any loan contracted but should extend to the repayment of the loan itself; in other words to the punctual discharge of the sinking fund.” Notes on Clauses p. 36.

The raising of loans by municipalities is regulated by the Local Authorities Loans Act [Act IX of 1914. (I. C.)]. No loan can be raised except as provided by that Act and the rules made thereunder or except under any special enactment relating to the municipality concerned. Loans can be obtained from Government or in the open market or from private persons subject to rules prescribed under the Act, but no loan can be raised except for the construction or repair of works of public utility within the municipal

limits or for the benefit of the inhabitants within those limits. Government has also forbidden that loans obtained for one purpose may be diverted to another purpose by municipalities.—Circ. (Munl.) No. 1 T.M. of 4th May, 1901. (See Appendix).

See also sec. 69 cl. (1) which prohibits monies which have been received by the Commissioners for any specific object from being spent on any other object.

Purposes to which municipal fund is applicable.

**68. (1) Subject to the charges specified in section 67 the Commissioners at a meeting shall, as far as the municipal fund permits, from time to time cause roads, bridges, tanks, ghats, wells, channels, drains, latrines and urinals, being the property of the Commissioners, to be maintained and repaired, and the municipality to be cleansed; and may, except as is otherwise provided in this Act, and subject to the prescribed restrictions, apply the municipal fund to any of the following purposes within the municipality, that is to say,—**

**(i) the construction, maintenance and improvement of roads, tramways, bridges, squares, gardens, tanks, ghats, wells, channels, drains, latrines and urinals;**

**(ii) the supply of water and the lighting and watering of roads;**

**(iii) the acquiring and keeping of open spaces for the promotion of physical exercise and education;**

**(iv) the planting and preservation of trees;**

**(v) the erection and maintenance of offices and other buildings required for municipal purposes;**

**(vi) the erection and maintenance of model dwelling houses;**

**(vii) the construction, establishment and maintenance of schools, and of hostels to be used in connection with schools, either wholly or by means of grants-in-aid;**

**(viii) the establishment of scholarships;**

**(ix) the construction, establishment and maintenance of hospitals dispensaries, leper asylums, sarais, poor-houses and dharmshalas, either wholly or by means of grants-in-aid;**

**(x) the employment of vaccinators and the promotion of vaccination;**

**(xi) the employment of health officers, sanitary inspectors, female medical practitioners and midwives;**

**(xii) the prevention of the spread of epidemic diseases;**



(xiii) the construction, establishment and maintenance of veterinary dispensaries, the employment of veterinary practitioners and the appointment and payment of persons possessing the prescribed qualifications to prevent and treat diseases of horses, cattle and other animals;

(xiv) the improvement of the breed of horses and cattle and the breeding of mules;

(xv) the payment of rewards for the destruction of noxious animals or diseased or unclaimed dogs;

(xvi) the establishment and maintenance of a municipal market, or the taking of a market on lease;

(xvii) the establishment and maintenance of dairies and the improvement of the milk supply;

(xviii) the establishment and maintenance of free libraries;

(xix) the maintenance of a fire brigade;

(xx) the holding of fairs and industrial exhibitions;

(xxi) the giving of relief, and the establishment of relief works, in time of scarcity or any general calamity;

(xxii) the payment of compensation to any person sustaining any damage by reason of the exercise of any of the powers conferred by this Act;

(xxiii) the payment to an officer or servant of the Commissioners of a bonus for good work done or of compensation for loss incurred in the execution of his duty;

(xxiv) the payment of advances to an officer or servant of the Commissioners for the purchase of means of conveyance, or for the purpose of enabling him to acquire and construct a residence for himself;

(xxv) the provision and maintenance of public trams and omnibuses and other means of locomotion; and

(xxvi) all acts and things which are necessary for carrying out the purposes of this Act, or which are likely to promote the safety, health, welfare, or convenience of the inhabitants, or expenditure whereon may be declared by the Commissioners, with the sanction of the Local Government, to be an appropriate charge on the municipal fund.

(2) The Commissioners may do all things, not being inconsistent with this Act, which may be necessary to carry out the purposes of this section.

## NOTES.

The section corresponds to sec. 69 of B. M. Act.

" This clause adds several items to the list of objects on which the Municipal Fund may, subject to the restrictions imposed by the rule be expended, namely, the planting and preservation of trees, the erection of model dwelling houses, the construction and maintenance of hostels with schools, the training of teachers and the establishment of scholarships, the construction and maintenance of leper asylums, *sarais*, poor houses and *dharmshalas*, the prevention of the spread of epidemic diseases, the payment of the expenses of indigent inhabitants who have to resort to a hospital, asylum or institution for the treatment of special or mental diseases, the payment of rewards for destruction of noxious animals and unclaimed or diseased dogs, the establishment and maintenance of dairies and the improvement of the milk supply, the taking of a census, the payment of a bonus to municipal officers or servants for good work or of compensation for loss and the grant of advances for the purchase of means of conveyance and the construction of buildings. Finally the Commissioners are empowered to propose, and the Local Government to sanction expenditure on any object not mentioned in the clause which is likely to promote the good of the inhabitants and is an appropriate charge on the Fund. The powers of the Commissioners with regard to the expenditure of money are thus very largely increased. The Local Government will be able to prescribe by rule the priority which the various objects of expenditure are to take." Notes on Clauses p. 37.

The Select Committee in their report para 29 recommended the omission of some clauses in this section which stood in the original Bill, " We have omitted all clauses authorising the expenditure of municipal funds on the training of teachers, Health officers, etc., as in our opinion the duty should be carried out by Government. We also do not consider item (xiii) treatment of indigent persons at hospitals outside the municipality or (xxii) Census as legitimate purposes on which the Municipal Fund should be expended." Report of the Select Committee, para. 29.

This section introduces 9 new clauses, viz., clauses (iv), (vi), (viii), (xv), (xvi), (xvii), (xx), (xxi), (xxv) to the section as it stood in the Bengal Act. It enables the Commissioners to devote part of their funds to these purposes subject to the proviso that they could be undertaken only after all the ordinary purposes have been sufficiently provided for. This section is sufficient authority for the Commissioners to spend their fund on the purposes mentioned in it when they have arranged to carry out all prior duties, subject however to secs. 75 (1) and 81 (3) of this Act. The Local Government

may by rule prescribe the priority which the various objects of the expenditure are to take. See Notes on Clauses, para. 37, quoted *ante*.

**Sub-section (1):**—The liabilities mentioned in sec. 67 are to be discharged in the order laid down in the section and after they are met out the municipal fund is available for the purposes mentioned in this section. The 26 clauses name specific purposes to which the municipal fund may be applied but the powers so conferred are subject to the other provisions in this Act and to any restrictions prescribed by the Local Government under sec. 81.

All the ordinary heads of expenditure under this section are set out in the form of Budget estimate prescribed in the Account Rules (See Appendix).

The first part of sub-section (1) provides for the maintenance and repairs of roads, bridges, tanks, ghats, etc., which vest in the municipality and the proper cleansing of them and the second part provides for new constructions and improvement of roads, tramways, etc., and the establishment of other works of public utility.

**Shall as far as the municipal fund permits:**—The municipal commissioners are liable for breach of this statutory duty. They are liable for misfeasance on their part and not merely for nonfeasance.

The Calcutta Municipal Act, sec. 191 provides that the Commissioners shall so far as the municipal funds permit from time to time cause the public streets to be maintained and repaired and for such purposes may do all things necessary for the public health, safety, and secs. 252 and 213 directed the Commissioners in opening the roads and persons to whom they have given permission so to do, to fence and light any excavations so made. In a suit for damages for hurt caused to the plaintiff for insufficient light and omitting to fence the holes it was held that the Corporation had a statutory obligation imposed upon them to maintain and repair the roads and fence the holes and were liable for breach of their statutory duty so also the contractor. *Corporation of Calcutta vrs. Anderson*, 10 Cal. 445.

In another case under the Bombay Act (Bom. Act III of 1901) where the plaintiff brought a suit against the Ahmedabad Municipality to recover damages sustained by him in respect of an injury caused to his horse and carriage in consequence of the neglect of the municipality to repair a road it was held that the default leading to the damage was a mere nonfeasance and the statute did not impose upon the municipality a duty towards the plaintiff which they negligently failed to perform and the suit must fail. *Achrat-lal Harilal vrs. Ahmedabad Municipality*, 28 Bom. 340.

But where the municipality had not kept a ditch in a state of repair but had allowed it to be choked with the rubbish of the town; they had con-

structed a dam in the adjoining creek, but allowed the sluices at the dam to be choked up with weeds, sedges and silt and the consequence was that some storm water which had collected in the creek passed on to the plaintiff's land and did damage, in a suit by the plaintiff for injury done to his property by the storm water held that there was misfeasance on the part of the municipality for they had turned their works by their negligence into a nuisance so as to throw the water collected on their property—the creek—on to the plaintiff's land, and therefore they were liable for the damage caused thereby. *Rajendra Lal Maneklal vrs. The Surat City Municipality*, 33 Bom. 393.

**Clause (i):**—Roads, bridges, tanks, ghats, wells, channels, drains, latrines, urinals, generally vest in the municipality, under sec. 58. Tramways may be constructed under the Bengal Tramways Act III of 1883 (B. C.) The Commissioners are hereby empowered to construct, maintain and improve roads, tramways, bridges, squares, gardens, tanks, ghats, wells, channels, drains, latrines and urinals.

Public latrines and urinals for the separate use of each sex may be provided for by sec. 213 and the Commissioners may also make bye-laws regarding them under secs. 221, 234, 355.

Where a narrow strip of land at the entrance of a private street was acquired for the purpose of widening the street in order to facilitate the effective use of fire engines held that the acquisition of land for such a purpose was within the powers of a municipality as it was conducive to the promotion of public health, safety and convenience. The acquisition of land for widening of a road may be the first step towards the making of a broad public street through the quarter of the town. Of course none but roads in which the public have a right of way are vested in the municipality but it does not follow that in regard to private streets or courts the municipality have no power to interfere in any way or in regard to which the application of its funds will be unlawful. The construction and maintenance of new streets and the acquisition of lands for such purposes are expressly provided by the Act. *Shastri Ramchandra vrs. Ahmedabad Municipality*, 24 Bom. 600.

The duty imposed on District Boards by sec. 95 (a similar section) of Madras Act V of 1894 to construct and maintain roads casts on them by necessary implication the duty of constructing and maintaining the necessary culverts and tunnels under them. This implied power to construct and maintain such culverts and tunnels is not merely permissive, to be exercised only when no injury will be caused to others thereby, but an imperative duty cast on the Board by the Act. *Aiyasam Aiyar vrs. District Board Tanjore*, 31 Mad. 117.

**Clause (ii):**—This clause deals with the supply of water and the lighting and watering of the roads. In the Bengal Act all the provisions on water-supply were collected in Part VII and the lighting of roads by gas and electricity in Part VIII and where Part VIII was not in force the Commissioners could spend money out of the general funds for lighting the streets with oil lamps and for watering the roads. But in this Act the arrangements have been changed. Chapter IV deals with municipal taxation in general and Part I relates to the Commissioners' powers to impose water and lighting taxes and Part VII gives power to the Local Government to make rules on the subject.

**Clause (iii & iv):**—The clauses correspond to clause (viii) of the Bengal Act. Clause (iv) is a new item on which the municipal fund can be expended. See the Notes on Clauses, para. 37, quoted *ante*.

The Commissioners are authorised by these clauses to make new parks and gardens and to plant and preserve trees.

**Clause (vi):**—This clause is a new addition to the section. See Notes on Clauses, para. 37, quoted *ante*.

**Clause (vii):**—Corresponds to clause (iv) of sec. 69 of the Bengal Act. Existing schools could be taken over by the municipality under sec. 60. This clause enables the Commissioners to establish new schools.

Grants-in-aid to schools:—"It is one of the first duties of a municipality to provide primary education for all boys and as many girls as will accept it and Sir Charles Illiot desires that in future, Commissioners of Divisions when dealing with the annual estimates of municipalities will see that provision is made for the proper performance of this duty before any funds are allotted to the support of secondary education. A municipality may fairly be required to provide primary education for all boys of school-going age, a number which may be taken to be 15 p. c. of the male population of the town. The demands of primary education, thus formulated, must be held to take precedence over the secondary education, and Commissioners of Divisions are authorised to give effect to this principal in dealing with municipal budgets under sec. 76 of the Act." Government Resolution on the Administration of Bengal Municipalities 1890—91, page 22.

**Clause (viii):**—This is a new clause. See Notes on clauses, para. 37, quoted *ante*.

**Clause (ix):**—This clause corresponds to clause (iv) of sec. 69 of the Bengal Act which related to the establishment and maintenance of hospitals and dispensaries only. The constructions, etc. of leper asylums, sarais.

poor-houses, *dharmasalas* are additions in the present clause. See Notes on Clauses, p. 37, quoted *ante*.

Existing hospitals and dispensaries could be taken over by the municipality under sec. 60; this clause relates to the establishment of new ones.

For special rules as to the liability of municipalities to maintain public dispensaries. See Account Rules and Dispensary Rules (Appendix).

**Clause (x):**—The clause cor. to clause (vii) of the Bengal Act, sec. 69.

**Clause (xi):**—Cor. to clause (ix) of the Bengal Act, sec. 69.

**Clause (xiii):**—See cor. clauses (ix and x) of the Bengal Act, sec. 69.

This clause provides for the establishment of veterinary dispensaries and appointment of Veterinary Assistant Surgeons.

**Clause (xiv):**—Corresponds to clause (xii) of the Bengal Act. This can be done by holding shows of the animals mentioned and awarding prizes for the best specimens.

The Government of India especially brought to the notice of municipalities the advisability of assisting in the breeding of mules.—Bengal Government (Circ. Munl.), No. 23 T.M. of 21st Oct., 1901.

This clause allows the Commissioners to purchase bulls and stallions to assist in the improvement of the breed of cattle and horses, etc.

**Clause (xv):**—This clause is new. See Notes on Clauses, p. 37 quoted *ante*.

**Clause (xvi):**—This clause is new. In the Bengal Act, clause (xv) the wordings of which were similar to this clause, enabled the Commissioners to establish markets, slaughter-houses, pounds and also arboriculture, public gardens and experimental cultivations. Provisions regarding markets were made in Part X of the Bengal Act.

This clause empowers Commissioners to establish and maintain municipal markets or take over on leases existing and established markets; and thus not only obtain some additional incomes but also regulate the sale of food-stuffs.

**Clause (xvii):**—This clause is new and is meant to improve the milk-supply within the municipality. See Notes on Clause, p. 37, quoted *ante*.

**Clause (xviii):**—Corresponds to clause (xiii) of the Bengal Act.

**Clause (xix):**—Corresponds to clause (xiv) of the Bengal Act. Sec. 269 enables the Commissioners to establish a fire brigade.

**Clause (xx):**—The clause is new.

**Clause (xxi):**—The clause is new.

**Clause (xxii):**—The clause is new. It gives power to the Commissioners to pay any reasonable compensation out of Court to any person sustaining any damage by reason of the exercise of any of the powers conferred by this Act on the Commissioners and their servants.

**Clause (xxiii):**—The clause is new.

**Clause (xxiv):**—The clause is new. Advances can be made to the municipal officers or servants for the purpose of acquiring or constructing residential buildings for themselves or for purchasing means of conveyance to enable them to discharge their duties more expeditiously and effectively. Under the Bengal Act this system of advancing was not permitted.

**Clause (xxv):**—This clause is new. Public trams, omnibuses and motor services can now be maintained by the municipality.

**Clause (xxvi):**—This clause is based on clauses (xv) and (xvii) of the Bengal Act.

This clause empowers the Commissioners generally to carry out the purposes of this Act that is whatever are directly the express or implied purposes of this Act, or to do all acts and things which are likely to promote the safety, health, welfare, convenience of the inhabitants or to undertake all such works the expenditures on which have been sanctioned by the Commissioners with the approval of the Local Government.

When a municipality resolved to establish a band and buy musical instruments for it and three tax-payers objected that, that was *ultra vires* it was held that they could maintain a suit to try the question whether the resolution in favour of such a purpose was or was not illegal and restrain the municipality to expend any sum out of the municipal funds on such purchases. *Vaman Tatyazi vs. The Municipality of Sholapur*, 22 Bom. 646.

**Sub-section (2):**—This clause is same as sub-section (3) of sec. 69 of the Bengal Act. "This differs from clause (xxvi) of sub-section (1) above, in that it deals not with the primary, express or implied, purposes of the Act, but with things that may be necessary thereto in an indirect or collateral way, provided such things are not inconsistent with the Act. Two conditions therefore are necessary here, (1) that the things proposed must not be inconsistent with the Act, and (2) that it must be necessary in a secondary degree to those purposes, and unless both these conditions are satisfied, the thing proposed is not permissible." J. Pargiter's B. M. Act, p. 104. By sec. 81 (8) the Local Government may make rules regarding the carrying out of the purposes of this section.

The Government has intimated that the municipal fund cannot properly be applied to the purchase of a silver casket to contain an address presented

to the Lieutenant-Governor. Circ. (Munl.) No. 14 M. of 30th March, 1892; nor to meet the cost of local celebrations in honor of the coronation—Circ. (Polit.) No. 2358P. of 27th Nov., 1902. Such expenditure should be met by voluntary subscriptions.

Where a District Municipality acquired a narrow strip of land at the entrance of a private street for widening the street in order to facilitate the effective use of fire-engines, in a suit brought by the plaintiff on the allegation that the *pol* was a private street and the widening of the street was not for any of the purposes contemplated by the District Municipal Act (Bom. Act VI of 1873) it was held that the acquisition of land for such a purpose was within the powers of the municipality and the Civil Court had no jurisdiction to restrain the municipality from exercising such powers. All questions of relative necessity, advantage or facility are questions of municipal detail and it is not within the province of a Civil Court to seek to regulate these details. *Shastri Ramchandra vs. The Ahmedabad Municipality*, 24 Bom. 600.

**69. Notwithstanding anything contained in section 68—**

Restriction on application of moneys received for certain purposes.

**(1) all moneys collected, received or recovered by the Commissioners, whether as taxes, fines or otherwise, or for the execution of works, for, or in any respect relating to,—**

- (i) the water-supply,**
- (ii) the lighting system, and**
- (iii) the cleansing of private and public latrines, urinals, and cess-pools and the provision and maintenance of public latrines and urinals,**

**shall, after deduction of such proportionate share of the cost of collection and supervision as the Commissioners at a meeting may fix, be applied in defraying the expenses respectively—**

- (a) of making, extending or maintaining the water-supply,**
- (b) of making, extending or maintaining the lighting system, and**
- (c) of cleansing private and public latrines, urinals and cesspools, and of providing, extending or maintaining public latrines and urinals,**

**and in repaying or paying interest on debts incurred in connection with the said purposes respectively;**

**(2) money which has been received by the Commissioners for any specific object shall not be expended on any other object.**



## NOTES.

This section corresponds to secs. 307, 318A and 322 (8) of the B. M. Act.

"The proceeds of the conservancy tax will not be limited to expenditure on the cleansing of private latrines and urinals but will be devoted to general conservancy also." Notes on Clauses, p. 38.

This section prescribes that the monies received as taxes, fines or otherwise under the three heads, *viz.* (1) water-supply, (2) lighting system and (3) latrines and cess-pools, shall be spent in those purposes only and in repaying or paying interest on debts incurred in connection with them, *i.e.*, on making, extending or maintaining the water works, lighting system and cleansing latrines and in improving and extending public latrines, after deducting the proportionate shares of the cost of collection and supervision fixed by the Commissioners.

The funds received as latrine tax under clause (iii) can under clause (c) be spent in providing, extending or maintaining public latrines, urinals, etc. See Notes on Clauses para. 38 quoted above. But so long as no latrine tax is imposed, public latrines, etc., have to be maintained out of the general municipal fund under sec. 204. (See notes to that section).

"We do not agree that a general conservancy tax should take the place of the present latrine tax, but we consider that the latrine tax may rightly be expended on the cleansing and provision of public latrines as well as the cleansing of private latrines. The tax is levied on holdings not containing latrines and it is reasonable that the rate-payers should get some benefit." Report of the Select Committee, para. 30.

The restrictions on the imposition of water tax, lighting tax and latrine tax are prescribed by secs. 85 and 86. See notes to those sections.

**Sub-section (2).** This clause cor to sec. 69A (2) of the B. M. Act.

"We have amplified this clause so as to refer not only to hospitals but to provide that any grant given for a specific purpose is spent for that purpose." Report of the Select Committee, p. 31.

Money received for specific objects must be spent on those objects alone. See also the Government Notification quoted in the notes to sec. 67, clause (b).

Expenditure outside  
the municipality.

**70. With the consent of two-thirds of the Commissioners obtained in writing, and with the sanction of the Local Government, the Commissioners may contribute a portion of the municipal fund towards the expenses incurred in any other municipality or elsewhere for any of**

the purposes mentioned in section 68, sub-section (1), or towards the salary of any officer of another authority whose services are employed by them; and also towards the expenses of making, maintaining and repairing any work for the improvement of a river or harbour, by whomsoever such work may be done;

But no contribution shall be made under this section to any work unless the same is calculated to benefit the inhabitants of the contributing municipality.

### NOTES.

The section cor. to sec. 70 of the B. M. Act.

This section empowers the Commissioners to spend the municipal fund outside the municipal limits on some strict conditions. A mere vote of the Commissioners at a meeting is not sufficient to warrant the expenditure set out in the section. The Commissioners by a majority of two-thirds must themselves in writing sanction the expenditure and it must also have the sanction of the Local Government before the expenses can be made. The works on which the expenditures are to be incurred must be such that they will benefit the inhabitants of the contributing municipality, otherwise the contribution cannot be made.

The expenses for which contributions can be made must be for one of the purposes mentioned in section 68 sub-sec. (1) or towards the salary of any officer whose services are lent to the contributing municipality or towards the making, maintaining and repairing of any work calculated to improve any river or harbour and over and above any of these the works must be calculated to benefit the inhabitants of the contributing municipality.

Government acting on the advice that under this section read with section 69 clauses vi and xv of the B. M. Act (corresponding to sec. 68 clauses (ix) and (xxvi) of this Act) district municipalities may make contributions to the Pasteur Institute, pointed out that the conditions precedent are (1) that the Institute is calculated to benefit the inhabitants of the contributing municipality, (2) that the consent of two-thirds of the Commissioners in writing is obtained, and (3) that the sanction of the Local Government is obtained. Circ. No. 1267 Medl. of 26th March, 1901.

### BUDGET ESTIMATES.

Preparation of budget estimates.

**71. (1) The Commissioners at a meeting, held at least two months before the close of the year, shall prepare in detail budget estimates showing the probable receipts and**

expenditure during the ensuing year and the objects in respect of which it is proposed to incur such expenditure.

(2) In such estimates the Commissioners shall among other things—

(a) provide for the payment, as they fall due, of all instalments of principal and interest for which the Commissioners may be liable in respect of loans contracted by them,

(b) make adequate and suitable provision for such services as may be required for the several duties imposed by this Act, and

(c) provide for a cash balance at the end of the year of such amount as the Local Government may from time to time determine with reference to municipalities generally or to any municipality or class of municipalities in particular.

#### NOTES.

The section cor. to sec. 72 of the B. M. Act.

“ We have given municipalities almost complete control over their budget estimates and have only provided that the budget estimate shall require the sanction of any higher authority when the municipality is seriously indebted. Clause 77 (sec. 77) is in our opinion necessary, as in the case of indebted municipality provincial funds given to the municipality in the form of loans or grants are endangered. In other cases we have merely provided for the budget to be submitted to Government or to such authority as Government may direct and have empowered Government to prescribe a minimum closing balance. Old Clause 78 has been redrafted for the sake of clearness.” Report of the Select Committee, para. 32.

The budget of municipalities other than those coming under sec. 77 (i.e. of indebted ones) is to be prepared in details at least two months before the close of the financial year. In ordinary cases copies of the budget estimates and translations thereof in vernacular shall be lodged in the office of the Commissioners and notice whereof shall be locally published and they shall be open to inspection by all tax-payers for a period of 14 days (sec. 72 and 73) and the tax-payers shall be entitled to make any written suggestions during the period. The suggestions of the tax-payers may be considered by the Commissioners at a meeting and after such revision of the estimates as necessary the budget shall be sanctioned and copies of the sanctioned budget shall be submitted forthwith to the Local Government or to such authority as the Local Government may direct. The Commissioners may also revise the budget subsequently to enable them to provide

any modifications which they may deem advisable to make in the appropriation of the amounts at their disposal. Such revised estimate should also be published locally and submitted to the Local Government or to the prescribed authority.

The estimates prepared must give details showing the probable receipts and expenditures of the coming year and the objects in respect of which the expenditures are sought to be made. It must be prepared at least in the early part of January and submitted to the meeting before the close of the month. The budget so framed will then remain in the office for 14 days to admit of criticisms by the rate-payers and their criticisms must be considered after the expiry of that period. The meeting of the Commissioners to consider these criticisms and the necessary revision under sec. 73 would generally be held in February. It is the first estimate under sec. 71 which has to be prepared in January. There are no other time limits fixed for the other steps before the estimate receives the final sanction of the Commissioners under sec. 73; but everything about the budget must be finished before the month of March and the last meeting about the budget authorising the Chairman to incur the expenditures provided in the estimates must be held in March otherwise no order of payment can be passed. (Sec. 75).

**Sub-section (2):**—In the preparation of the estimates three things are to be principally provided for; first the repayment of loans if any with interest, second, the services as may be required for the several purposes of the Act, third, the minimum cash balance at the end of the year as prescribed by the Local Government.

The closing balance for a municipality should not be less than the total average charges for two months. Memo. No. 982—1067 L.S.G., dated the 23rd January, 1923, of the Ministry of Local Self-Government.

Publication of budget estimates.

**72. (1) Copies of the budget estimates and translations thereof in the vernacular of the district shall be lodged in the office of the Commissioners.**

**(2) During fourteen days after the said copies and translations have been so lodged in the said office, of which due notice shall be locally published, they shall be open to inspection at all reasonable times by any tax-payer of such municipality who may desire to inspect them.**

**(3) Any written suggestion which may be deposited in the office of the Commissioners shall be laid before them for consideration at the next meeting.**

## NOTES.

The sec. cor. to sec. 73 of B. M. Act.

The estimate prepared under sec. 71 and a translation of it in the vernacular of the district shall be lodged in the municipal office, notice whereof shall be locally published and they shall be open to inspection by the tax-payers, at reasonable times for 14 days; and it would be open to the tax-payers to make any written suggestions if they like which should be considered by the Commissioners at a meeting.

The method of local publication of any notice or document directed to be published under the Act is set out in sec. 356. A copy of the notice shall be written in or translated into the vernacular of the district and deposited in the office of the Commissioners and a copy shall be posted up in a conspicuous position at such office and in such other public places as the Commissioners may direct and a public proclamation by beat of drum shall be made notifying that such copy has been so posted and that the original is open to inspection in the office of the Commissioners.

Sanction to budget estimates.

**73. (1) After the expiration of the said fourteen days and after such revision as may appear requisite, the Commissioners at a meeting shall sanction the estimates.**

**(2) Copies of the estimates as sanctioned shall be submitted forthwith to the Local Government or to such authority as the Local Government may direct.**

## NOTES.

The sec. cor. to sec. 74 of B. M. Act.

After the expiration of the period of 14 days prescribed by sec. 72, the suggestions of the tax-payers have to be considered by the Commissioners at a meeting and after such revision of the estimates as they think necessary, they shall sanction the estimates and copies of the sanctioned estimates shall be submitted to the Local Government or to such authority as it may direct.

Revision of budget estimates of expenditure.

**74. The Commissioners at a meeting may, from time to time, revise any estimate of expenditure with the view of providing for any modifications which they may deem it advisable to make in the appropriation of the amount at their disposal, and such revised estimate shall be published and submitted in the manner hereinbefore specified.**

## NOTES.

The sec. cor. to sec. 77 of B. M. Act.

If the Commissioners during the currency of the year find that there is deficit under one head while there is some surplus under another head, then under this section they may revise the budget and transfer funds from one head to another. The revised estimate has also to be locally published and after consideration of any suggestions by the tax-payers it has to be sanctioned by the Commissioners at a meeting and copies submitted to the Local Government or to any other prescribed authority.

Disbursement of expenditure sanctioned in budget estimates.

**75. (1) After the budget estimates of the municipality for the year have been sanctioned under section 73, the Commissioners at a meeting may, subject to the prescribed restrictions, from time to time, by a general or a special resolution, authorize the expenditure of any sum, provided in such estimates, or any part of such sum, for the purpose to which it has been assigned in such estimates.**

**(2) No order for the payment of money from the municipal fund shall issue unless the expenditure thereof has been authorized by the Commissioners as provided in sub-section (1).**

## NOTES.

The sec. cor. to secs. 78 and 84 of B. M. Act

After the budget estimates are sanctioned the Commissioners at the same or another meeting have to authorize the expenditure on the various heads and unless this is done no payment order can be passed. The authorization of the expenditures can be done by a general or special resolution for the whole or part of the budget and it must also be subject to this restriction that no expenditure under any head is to exceed the amount sanctioned in the budget (sec. 76) without recourse to the procedure laid down in sec. 74.

Expenditure not provided for in the budget estimates,

**76. When the budget estimates have been sanctioned, the Commissioners shall not incur any expenditure under any of the heads of the said estimates, in excess of the amount sanctioned under that head, without making a provision for such excess by a revision of the budget estimates in the manner specified in section 74.**

## NOTES.

The section is new and was redrafted for the sake of clearness.

Power of Local Government in case of indebted municipalities.

**77. When in the opinion of the Local Government any municipality is in such a condition of indebtedness as to make control over its budget estimates desirable, the Local Government may, after giving notice to the Commissioners and considering any explanation that may be submitted by them within the time specified in the notice, by order declaring that such is the case, direct that they shall be subject to its sanction and that their revision under section 74 shall be subject to like sanction.**

#### NOTES.

This section is new.

" We have given municipalities almost complete control over their budget estimates and have only provided that the budget estimates shall require the sanction of any higher authority when the municipality is seriously indebted. Clause 77 (sec. 77) is in our opinion necessary as in the case of an indebted municipality provincial funds given to the municipality in the form of loans or grants are endangered. In the other cases we have merely provided for the budget to be submitted to Government or to such authority as Government may direct and have empowered Government to prescribe a minimum closing balance." Report of the Select Committee, para. 82.

In the case of indebted municipalities their budgets require sanction of the Local Government, and after the estimates are prepared by the Commissioners under sec. 71 or revised under sec. 74 they are sent to the Local Government for its sanction.

The procedure under this section has to be followed when the Local Government opines that the municipality concerned is in a serious state of indebtedness and after giving notice to the Commissioners and consideration of any explanations submitted by them it declares that the municipality is in a state of indebtedness.

The object of the section is to keep control over the expenditures of such an involved municipality and to see that funds given to it either as loans or grants might not be wrongly applied.

Power of Local Government, if work estimated to cost more than ten thousand rupees

**78. If any work is estimated to cost more than ten thousand rupees, the Local Government may require the plans and estimates of such work to be submitted for its approval before such work is commenced; and may require statements of the progress and completion of**

such work, with accounts of the expenditure on the same, to be submitted from time to time, in such form as it may prescribe, for its approval.

#### NOTES.

The section cor. to sec. 79 of B. M. Act.

For the rules for the preparation, submission and execution of such projects. See Account Rules.

The section empowers the Local Government to demand the submission of the plans and estimates of works the probable cost of which is estimated to exceed rupees ten thousand for its approval before the work is commenced and also to ask for periodical statement of the progress of the work and the expenditures incurred on the same.

The wording of the section shews that the Local Government may and not shall demand the submission of the plans, etc., before the work is commenced. This power is reserved to the Local Government to prevent municipalities from launching into schemes which in the opinion of the Local Government are not necessary or should not be undertaken without the assistance of properly trained men.

#### DISPOSAL OF MUNICIPAL FUND AND PROPERTY

on sub-division, union or withdrawal of Municipalities.

Apportionment and disposal of municipal property upon a sub-division or union of municipalities.

**79. When two or more municipalities are united or a municipality is sub-divided by a notification published under section 6, the municipal funds or fund, and all property vested in the Commissioners of the municipalities or municipality concerned, shall be consolidated, or apportioned in such manner as the Local Government may direct.**

#### NOTES.

The sec. cor. to sec. 9B of B. M. Act.

In case of union of two or more municipalities or division of one into several, the Local Government has to consolidate or apportion the municipal funds in such a way as it thinks proper.

Municipal Fund—what shall constitute it see sec. 65.

Disposal of fund and property on exclusion of local area from municipality or withdrawal of whole area of municipality from Act.

**80. (1) When a local area is excluded from a municipality by a notification published under section 6, the Local Government shall, after consulting the Commissioners, frame a scheme determining what portion of the balance of the municipal fund and other property vested in the Commissioners**



shall vest in His Majesty for the benefit of the inhabitants of the local area and in what manner the liabilities of the Commissioners shall be apportioned between the Commissioners and the Secretary of State in Council; and on the publication of such scheme in the Gazette such property and liabilities shall vest and be apportioned accordingly.

(2) When the whole area comprised in any municipality is withdrawn from the operation of this Act by a notification published under section 6, the balance of the municipal fund and all other property at the time of the publication of the notification vested in the Commissioners shall vest in His Majesty and the liabilities of the Commissioners shall be transferred to the Secretary of State for India in Council.

(3) All property vested in His Majesty under this section shall be applied, under the orders of the Local Government, to the discharge of the liabilities imposed on the Secretary of State for India in Council thereby, and for the promotion of the safety, health, welfare or convenience of the inhabitants of the area affected.

#### NOTES.

No corresponding section in the B. M. Act. This section is based on sec. 8 of the Punjab Act III of 1911 and section 7 of C. P. Act XVI of 1903.

“ The omission of any provision for the disposal of the Municipal Fund when the Act ceases to operate in the whole or part of municipal area is a defect in the Bengal Act.” Notes on Clauses, p. 40.

When a part of a municipal area is excluded from a municipality the Local Government after consulting the Commissioners, has to frame a scheme determining what portion of the balance of the municipal fund and other property of the Commissioners shall vest in His Majesty and in what manner the liabilities of the Commissioners shall be apportioned between the Commissioners and the Secretary of State and on the publication of the scheme in the Gazette such property and liabilities vest and are apportioned accordingly.

When the whole municipal area is excluded from the operation of this Act the balance of the municipal fund and all other properties of the Commissioners at the time of the notification vest under this sub-section in His Majesty and the liabilities of the Commissioners are transferred to the Secretary of State. After the vesting of the fund and properties in His Majesty the Local Government applies the funds to the discharge of the liabilities imposed under sub-section (2) on the Secretary of State and on objects

which promote the safety, health, welfare or convenience of the inhabitants of the affected area.

**RULES AS TO THE MUNICIPAL FUND AND PROPERTY.**

**81. The Local Government may make rules consistent with this Act—**  
Power to make rules.

- (1) to regulate the application of the municipal fund to the purposes mentioned in section 68, and generally, for the guidance of the Commissioners in all matters connected with the carrying out of the said purposes;
- (2) to regulate the keeping, checking and publication of accounts and the periodical audit thereof;
- (3) to regulate the preparation of the budget estimates, and the expenditure of money for purposes provided therein;
- (4) to provide for the retention of adequate working and closing balances;
- (5) to provide for the preparation of plans and estimates for works to be partly or wholly constructed at the expense of the Commissioners, and to determine the persons by whom, and the conditions subject to which, such plans and estimates are to be sanctioned;
- (6) to regulate the preparation, submission and publication of returns, statements and reports by the Commissioners, and to prescribe registers and forms;
- (7) to determine the persons by whom orders for payment of money from the municipal fund may be signed, and by whom receipts may be given;
- (8) to regulate any other matter relating to the municipal fund or municipal property in respect of which this Act makes no provision, or insufficient provision, and provision is, in the opinion of the Local Government, necessary.

**NOTES.**

Clause (1) corresponds to secs. 69 (1) and 69B of B. M. Act.

Clause (2) corresponds to secs. 71 & 82 of B. M. Act.

Clause (3) corresponds to secs. 72 & 78 of B. M. Act.

Clause (4) is new.

Clause (5) is new and is based on sec. 240 (1) (q) of Punjab Act III of 1911.

Clause (6) corresponds to secs. 81 & 82 of B. M. Act.

Clause (7) corresponds to sec. 84 of B. M. Act.

Clause (8) corresponds to sec. 127 (c) of U. P. Act II of 1916.

“ Power to make rules regarding the retention of adequate working and closing balances seems most desirable. Certain matters contained in substantive provisions in the Bengal Act are by this clause relegated to rules,”  
Notes on Clauses, p. 41.

This section empowers the Local Government to frame rules consistent with this Act to control and regulate the various matters mentioned in clauses 1 to 8 of the section.

**Consistent with this Act:**—See notes to sec. 19, *ante*.

The power of framing rules is under this section given to the Local Government. See also sec. 325. Rules made by the Local Government under this Act come into force in every municipality as soon as they are made and published in the Gazette (see 353). The power of framing by-laws supplementary to the general laws have also been given to the Commissioners under this Act and no sanction or confirmation of the Local Government is necessary as under the Bengal Act. See secs. 185, 234, 258, 274; but in order to legalise the imposition of penalties for breach of by-laws the sanction of the Local Government is necessary under sec. 355. Government has also framed model by-laws and the Commissioners may adopt them with such modifications as they think necessary.

**Clause (4):**—See sec. 71 (2) (c). By Memo No. 982—1067 L.S.G. dated the 23rd January, 1923, the Ministry of Local Self-Government has directed that the closing balance for a municipality should not be less than the total average charges for two months.

**Clause (7):**—See sec. 75. After the budget estimates are sanctioned the Commissioners at a meeting by a resolution has to authorize the expenditure of the sums provided in such estimates for the purpose to which it has been assigned in such estimates and unless this is done no order for payment of any money from the municipal fund can be passed. The Local Government has to frame rules determining the persons by whom orders for payment of money from the municipal fund are to be signed and by whom receipts are to be given. Sec. 122 prescribes that receipts for sums collected on account of any tax shall be signed by the tax-collector or by some other officer authorized by the Commissioners to grant such receipts. As the persons by whom receipts for collections are to be given are named in the Act the Local Government cannot frame rules determining them. So long as no new rules are framed by the Local Government under this Act the existing rules will continue to be in force. See sec. 391.

## CHAPTER IV.

### Municipal Taxation.

#### I.—Imposition of Taxes.

“ In this Chapter the provisions relating to taxation which are scattered about the Bengal Act are brought together and the procedure for the imposition, assessment and collection of the various taxes which are assessed on the annual value of holdings is assimilated. There seems to be no purpose in differentiating between the terms “ rate ” and the term “ tax ” so the word “ tax ” has been used.” Notes on Clauses, p. 42.

**Power to impose taxes.** **82. (1)** The Commissioners may, from time to time, at a meeting convened expressly for the purpose, of which due notices shall have been given, subject to the provisions of this Act and with the sanction of the Local Government, impose within the limits of the municipality the following taxes and fees, or any of them:—

- (a) a tax upon persons in sole or joint occupation of holdings within the municipality according to their circumstances and property within the municipality;
- (b) a tax on holdings situated within the municipality assessed on their annual value;
- (c) a water-tax on the annual value of holdings;
- (d) a lighting tax on the annual value of holdings;
- (e) a latrine tax on the annual value of holdings;
- (f) a tax on vehicles, horses and other animals named in the First Schedule;
- (g) a tax on dogs kept within the municipality;
- (h) a fee on the registration of dogs;
- (i) a fee on the registration of carts;
- (j) a fee on the registration of vehicles kept or used or plying; for hire within the municipality and of animals used to draw them;
- (k) a fee on vessels moored within the limits of the municipality at ghats or landing places constructed and maintained by the Commissioners; and
- (l) any other tax which has been declared by rules under the Government of India Act to be a scheduled tax which a

**local authority may be authorized to impose and to the proposals for imposing which sanction has been given by the Local Government:**

**Provided that both the taxes mentioned in clauses (a) and (b) shall not be enforced at the same time in the same ward in any municipality.**

**(2) The Commissioners may, from time to time, at a meeting convened as aforesaid, and in accordance with a scale of fees to be approved by the Local Government, charge a fee in respect of the issue and renewal of any licence which may be granted by the Commissioners under this Act and in respect of which no fee is leviable under sub-section (1).**

#### NOTES.

The section corresponds to secs. 85 & 86 of B. M. Act.

**Taxation and procedure:**—The Act of its own force creates neither any debt nor any debtors, but provides that, if the proper measures are taken, both may come into existence, and empowers the Commissioners to take those measures. There is no provision for taxing at all otherwise than by the prescribing of the machinery. If it does not exist, there can be no tax at all; nor unless it is applied can there be any debt due from any person. A statute not only enacts its substantive provisions but as a necessary result of legal logic, it also enacts as a legal proposition everything essential to the existence of the specific enactments. In the present case the legislature has imposed certain duties both upon the tax-payer, and upon the Commissioners. Those duties—as to the tax-payers enforceable by penalties—are to be performed at a particular time. There is here implied a “latent proposition of law” which is as clear and binding as if it had been explicitly declared. That proposition is that there shall be a legally sanctioned tax at the period at which the duties are to be performed. There is no provision in that Act (Md. III of 1871) for levying any tax described in section 57 of the Act at all otherwise than by prescribing the machinery for its levy in secs. 58—61. If that machinery is not applied no liability to pay such tax can arise. *G. D. Leman vrs. Damodaraya* 1. *Mad.* 158.

In construing an Act so far as it invests the Commissioners with power to tax the subjects its provisions must be scrutinised very closely and construed with the utmost strictness. *Dwarka Nath Dutt vrs. Addya Sundari Mittra*, 21 Cal. 319 (825).

**Of any of them:**—the words in the cor. sec. 85 of the B. M. Act are “one or other or both of the following taxes.” According to the present section any number of the taxes enumerated in the section can be imposed simultaneously in any municipality; excepting the personal and holding tax which cannot be imposed simultaneously (*vide* proviso to section).

### **Tax upon persons.**

**Clause (a):**—corresponds to sec. 85 (a) of B. M. Act.

**Person**—the term is defined in sec. 4 (40) of the B. & O. General Clauses Act (Act I of 1917) it runs thus “person” shall include any company or association or body of individuals whether incorporated or not.

### **In sole or joint occupation of holdings.**

**Occupation**—“occupier” is defined in sec. 3 cl. (15) and includes an owner in actual occupation of his own land or building. See notes to the section *ante*. The definition is not exhaustive.

“The meaning of ‘occupation’ with reference to this subject of rating in England was discussed in *The Queen vrs. St. Pancras Assessment Committee* (1887) L.R. 2, Q.B. 581 and was explained thus. First the occupation contemplated includes actual possession as its primary element, for legal possession does not of itself constitute occupation. Thus, the owner of a vacant house is in legal possession, but as long as he leaves it vacant he is not rateable for it as an occupier; yet, if he furnishes it and keeps it ready for occupation whenever he pleases to go to it, he is an occupier though he may not reside in it one day in a year; on the other hand, a person, who without having any title takes actual possession of a house or piece of land whether by leave of the owner or against his will, is the occupier of it. Secondly permanence is necessary to constitute the kind of occupation contemplated. A transient temporary holding of land is not enough: it must be an occupation which has in it the character of permanence, namely, a holding as a settler and not as a wayfarer. A third ingredient was made clear in *Cory vrs. Bristow* (1877) L.R., 2 App. Cas. 262 namely the occupation of the person rated must be exclusive, such that it is in himself exclusively; and this term is used in this sense—not that his interest may not be determined on certain terms and conditions—but merely that his right of occupation is unattended by a simultaneous right of any other person in respect of the same subject matter. Where the case is one of renting premises it was further explained in *Smith vrs. St. Michael, Cambridge* 30 L. J. (M. C.) 74 and in the same *St. Pancras* case that the substantial intention of the relation of the parties must be looked to and not merely particularly expressions; that is, whether the lessor gives the lessee the

exclusive occupation of the premises or whether he allows temporary use thereof in the nature of an easement." J. Pargiter's B. M. Act, p. 119.

See in this connection the case *The Chairman Jalpaiguri Municipality vs. The Jalpaiguri Tea Co., Ltd.*, 26 C.W.N. 311 in which the principles of English law laid down in the cases of *Queen vs. St. Pancras Assessment Committee* and *Cory vs. Bristow* and other English cases on the point have been fully discussed.

Two companies had a joint office and the municipality assessed a separate tax on each of the companies, in suits by the two companies for declarations that the taxes were illegal in that each of the joint occupants of the holding has been separately assessed at the maximum amount it was held that the companies undoubtedly were persons and they occupied holdings inasmuch as the possession of the holding by each of them was actual as of right and not of a transient character. There was nothing in the section which saved them from liability because their occupation was joint. *The Chairman Jalpaiguri Municipality vs. The Jalpaiguri Tea Co., Ltd.* and another, 26 C.W.N. 311.

Bare ownership does not constitute rateable occupation. In order to constitute rateable occupation there must be a use and enjoyment which is or is capable of being beneficial. When four only out of five co-owners of a municipal holding were residing on the premises the other merely because he was a co-owner was not liable for the water rate and the latrine fee payable for the holding by the "occupier" under the provisions of the B. M. Act. *Khaja Shamsudin vs. Chairman Dacca Municipality*, 25 C.W.N. 282=60 I.C. 498.

See also notes to sec. 15 cls. (b) & (c) *ante*.

The term "holding" as used in sec. 85 (sec. 82) of B. M. Act means land held by an occupier under one title or agreement and surrounded by one set of boundaries. The rates assessed upon holdings according to sec. 101 (sec. 96) are payable by the owner, that is to say, the person above the occupier, if the occupier himself is not the owner under sec. 103 (see 100). Where there is an intermediate interest between the owner and the occupier such intermediate holder, and not the ultimate owner, is the person liable to pay rates. *Syed Shah Hamid Hossein vs. Patna Municipality*, 17 C.W.N. 812.

A, who was a naib of a zemindar, occupied a small house adjoining the kachari of his master. In that house he carried on business on behalf of his master. He did not use to pay any rent for that house. He was assessed by the municipality under sec. 85 cl. (a) of the B. M. Act as the occupier of the holding; held that the zemindar and not the naib was to be

regarded as the occupier and liable for payment of the municipal tax. A's house and the zemindar's *kachery* house were not one holding for the purpose of assessment. *Govinda Chandra Ganguly vs. Kailash Chandra Sanyal*, 15 C.L.J. 689.

**Sole or joint occupation:**—"With regard to the tax on persons there might be in one holding several persons each in sufficiently affluent circumstances to pay the tax and it is only right that each should be called upon to pay. For this reason the words "in sole or joint occupation of" have been inserted before "holdings" in sub-clause (1) (a)." Notes on clauses, p. 48.

Where a single person occupies a holding it is in his sole occupation and the matter is plain and creates no difficulty but where several persons live in the same holding the question often arises how far several persons living in the same holding are separately assessable. There may be circumstances in which more persons than one may occupy or may choose to occupy a particular holding jointly, making each of themselves assessable to the municipality. But where a particular individual occupies a holding and other persons live with him by reason of some connection with or relation to him such as sons or servants they are not separately assessable if possessed of separate incomes. *Ambica Charan Majumdar vs. Satish Chandra Sen*, 2 C.W.N. 689.

Under the present section persons in joint occupation of a holding whether as relations or otherwise are liable to pay separate personal tax according to their circumstances and properties, if such tax is in force in the municipality.

Sec. 85 (a) of B. M. Act cannot be limited in its application to a case where only one person occupies an entire holding. The companies undoubtedly were persons and they occupied holdings inasmuch as the possession of the holding by each of them was actual, as of right and not of a transient character. There was nothing in the section which saved them from liability because their occupation was joint. *The Chairman, Jalpaiguri Municipality vs. The Jalpaiguri Tea Co., Ltd.*, 26 C.W.N. 311=34, C.L.J. 283. See also in this connection, 25 C.W.N. 282.

**Holding:**—as defined in sec. 3 (9) means land held under one title or agreement and surrounded by one set of boundaries. For the purpose of this section where two or more adjoining holdings form part or parcel of the site or premises of a dwelling house, manufactory, warehouse or place of trade or business they are not necessarily to be deemed one holding.

Where two adjacent plots of land bounded by one set of boundaries are held by the same person as owner they must be deemed to be held by him



under one title and constitute one holding within the meaning of sec. 6 (3) of B. M. Act. It makes no difference that one plot was acquired by survivorship and the other by purchase. In such a case the owner of the plots is liable to one assessment in respect of the plots under sec. 85 (a) of the Act and not to separate assessments in respect of each of the plots. *Tulsi Prasad vrs. J. A. W. Wilson, Chairman of Dumraon Municipality*, 7 P.L.T. 85.

"When there are several buildings in one compound, if they are distinct and form separate dwelling houses, intended or suitable for different occupants, there is no legal objection to their being treated as different holdings provided the owner divides the compound into parts by metes and bounds and assigns to each house a separate compound which will then have a separate set of boundaries." Opinion of Legal Remembrancer defining under what circumstances a holding can be split up for the purpose of assessment into several holdings for the purposes of this clause. See J. Paragter's B. M. Act, p. 120.

**According to circumstances and property:**—In order to justify the taxation of a person under this clause it is necessary first that he must occupy a holding within the municipality and his circumstances and property within the municipality must be such that in the opinion of the Commissioners he is fit to be assessed to a personal tax.

The first condition which the law imposes, is that the person to be taxed occupies a holding or holdings within the municipality and the second condition is that the taxation must be according to that person's circumstances and property within the municipality. An assessment of tax made in consideration of the assessee's "circumstances and property" (altogether or partly) outside the local limits of the municipality is *ultra vires* and illegal. *Kameshwar Prasad vrs. The Chairman of Bhabua Municipality*, 27 Cal. 849.

A person who resided within a municipality procured business and collected premiums for a company which was outside the municipality and received a commission for his services; but he was not empowered to be the Company's agent and the company had no office or establishment within the municipality. It was held that the company was not doing business within the limits of the municipality. *Municipal Council, Coconada vrs. Standard Life Assurance Co.*, 24 Mad. 205.

The word "circumstances" in section 85 of B. M. Act is equivalent to means. Assessment according to that section must be made according to the means and property within the municipality. The burden of proving the value of "the circumstances and property within the municipality" is

on the municipality. *Deb Narain Dutt vrs. Chairman, Baruipur Municipality*, 41 Cal. 168, and *Chairman of Rajput Municipality vrs. Nagendra Nath Bagchi*, 23 C.W.N. 475=50 I.C. 394.

Where a rate-payer who occupied a holding within the municipal limits was assessed with an annual tax with reference to the salary earned by him within the municipality held that the assessment was rightly made and that "the circumstances and property" meant the whole amount earned and not what he spent within the municipality. The word "circumstances" was not intended to restrict the term "property." The intention seems to have been to widen the scope of the section so as to make taxable what might perhaps be not properly comprised under the term "property" and at the same time ought not to escape assessment, 35 Cal. 859=12 C.W.N. 709.

Circumstances and property have both to be taken into consideration in assessing the personal tax. Both the "circumstances" and "the property" referred to in the section must be within the municipality in question. "Circumstances" as used in this relation is equivalent to "means." The Civil Court has no jurisdiction to value the circumstances and means for the purpose of this section. It is the duty of the municipality when its method of taxation of a person's means and property is called in question in a civil court to disclose the method adopted so that the Court may be in a position to determine whether the method is correct or *ultra vires*. See the observations in *Deb Narain Dutt vrs. Chairman, Baruipur Municipality*, 41 Cal. 168, and also 48 Cal. 443 and 39 Cal. 141.

It is now settled law that the words "within the municipality" in sec. 85 of the B. M. Act govern both "circumstances" and "property" and that the word "circumstances" is in substance equivalent of "means." Income brought to be spent and enjoyed within the municipality in which the rate-payer is resident becomes part of the means or circumstances within the municipality, liable to assessment there under sec. 85 of the B. M. Act, *Chairman Jaynagar Municipality vrs. Sailabala Dutta*, 48 Cal. 443=25 C.W.N. 47. But in *Devendra Nath Rai Choudhury vrs. Chairman, Taki Municipality*, 25 C. W. N. 45, it has been held that under sec. 85 cl. (a) for purpose of assessment the municipality cannot take into account the circumstances and property of the assessee outside the municipality and must restrict itself to the circumstances and property that is the means and property within the municipality and further to measure the means and property within the municipality the test is not what is spent but what is earned within the municipality.

The above two conflicting views have been tried to be reconciled in 26 C.W.N. 311. Certain Tea Companies whose head offices were in one building in the town of Jalpaiguri had their gardens outside the municipal limits and the tea was sent direct from there to Calcutta and sold there. The sale proceeds used to be sent to a Bank in the town of Jalpaiguri which placed the amounts to the credits of the respective companies after deducting advances, etc., and the net amounts were ultimately distributed as dividends amongst shareholders. The Jalpaiguri Municipality separately assessed each of the said companies with a personal tax at the maximum rate on the basis of the income received at the Jalpaiguri Bank from the sale proceeds of the tea. It was held that the "circumstances and property" of a person depended upon what he got or upon what he spent within the municipality. In the present case though the original source of the income may be outside the limits of the municipality the entire income is brought to be spent and enjoyed within the municipality. The term "circumstances" is equivalent to "means." The proceeds of the sale of tea deposited in the Bank of Jalpaiguri are "the circumstances and property" of the companies, *i.e.*, their "means and property" within the municipality irrespective of questions as to whence the income accrues and so forth, and furnish a just measure of their liability under sec. 85 (a). The Chairman of the Jalpaiguri Municipality *vs.* The Jalpaiguri Tea Co., Ltd., 26 C.W.N. 311=34, C.L.J. 283.

Income derived from property situated outside the municipality does not come within the phrase "circumstances and property within the municipality" in sec. 85 of the B. M. Act and is not liable to assessment under cl. (a) of that section. Chairman of the municipality of Bihar *vs.* Mahant Ramdeo Das, 4 P.L.J. 673.

Under sec. 85 of B. M. Act the word "within" controls both the words "circumstances" and "property." Hence income derived from zemindary situate outside the municipality cannot be assessed as it does not come under the expression "circumstances and property within the municipality." Khwaja Syed Mahomed Ali Nawab *vs.* Chairman, Behar Municipality, 1 P.L.T. 591.

The mode of assessing the personal tax under this clause is laid down in secs. 89 to 97. See notes to those sections.

**Clause (b):**—The Commissioners have power given to them under this clause to impose on any holding a rate calculated on its annual value and not on anything else; what is meant by the annual value and how to arrive at it is laid down in sec. 98; and the method of assessment on the annual

value is laid down by secs. 98 to 119. See notes to those sections. This clause and sec. 98 cl. (1) must be read together to understand the meaning of the term "annual value." The rate under this clause is based on the annual value of the holdings themselves irrespective of the means of the occupiers.

**Holdings:**—the holding referred to in this clause is a holding as defined in sec. 3 (9). See notes *ante*.

The words "annual value" in sec. 88 of the Calcutta Municipal Act (the wording of which is similar to the present clause and sec. 98 cl. (1) must be taken to mean "annual letting value." Nundo Lal Bose *vs.* Corporation of Calcutta, 11 Cal. 275.

**Clause (o):**—Corresponds to sec. 86 cl. (d) of B. M. Act. The water rate has also to be fixed on the annual value of holdings and the maximum is fixed at  $7\frac{1}{2}$  p.c. of it under sec. 85 cl. (e). Sec. 85 puts some restrictions on the imposition of water tax and lighting taxes. See notes to those sections.

**Clause (d):**—Corresponds to sec. 86 cl. (e) of B. M. Act. The lighting tax is also fixed on the annual value of holdings and the maximum is fixed at 3 p.c. of the annual value by sec. cl. (e).

**Clause (e):**—Corresponds to sec. 86 cl. (f) of B. M. Act. The latrine tax is also based on the annual value of holdings. Sec. 86 puts certain restrictions on the imposition of this tax. See notes to that section.

**Clause (f):**—The vehicles, horses and other animals named in the First Schedule are motor car, motor lorry, tricycle, etc.

The details of procedure and amount of taxation under this clause are laid down by secs. 137 to 150.

**Clauses (g) & (h):**—These clauses are new.

"The toll on ferries has been omitted, but power is given to impose a tax on dogs or a fee for their registration, a fee on the registration of vehicles kept, used or plying for hire, as also a fee on vessels moored within the municipality."

"A tax on dogs has long ago been considered to be desirable both for the prevention of rabies and for the suppression of the annoyance caused by the multitudes of pariah dogs wandering about municipalities. The registration of dogs will facilitate the destruction of ownerless animals. Under clause 154 (sec. 153) the tax on dogs and a registration fee cannot be levied in the same municipality. Clauses 358 & 359 (secs. 348 & 349) provide for the carrying of tokens by dogs in respect of which tax or fee has been paid." Notes on Clauses, p. 48. The provisions of taxation and registration of dogs are laid down by secs. 151 to 158.

**Clause (i):**—Corresponds to sec. 86 cl. (b) of the B. M. Act. The fee on carts is prescribed by secs. 154 to 162. The payment of fee for registration of carts or vehicles qualifies the payer to vote at a municipal election, (see notes to sec. 15) provided the amount is over Re. 1—8 As.

**Clause (j):**—See para. 43 of Notes on Clauses quoted in notes to clauses (g) & (h) *ante*. Chapter X deals with the various provisions relating to vehicles plying for hire.

**Clause (k):**—the clause is new and taken from U. P. Act II of 1916 sec. 128 (1) (iv). See para. 43 of Notes on Clauses quoted under clauses (g) & (h) *ante*. The fee under this clause can be realised only when the vessels are moored within the municipality at ghats constructed and maintained by the Commissioners.

**Clause (l):**—the clause is new and borrowed from the Punjab Act III of 1911, sec. 61A, and U. P. Act II of 1916 sec. 128 (1) (xiii).

“ The clause will enable the Commissioners to propose and the Local Government to sanction any new tax the imposition of which either the state of the Municipal Fund or the special conditions of the municipality shows to be desirable.” Notes on Clauses, p. 44.

The Government of India Act of 1919 classifies certain subjects as reserved to the Government of India and the others as Provincial subjects. In the Division of Functions, Part II—Provincial subjects; rule, 1 (b) leaves the rights of the Indian Legislature to legislate as regards “ the levying by such authorities of taxation not included in Schedule II to the Scheduled Taxes Rules ” and in rule 48 of the part the following is shewn as a provincial subject, *viz.*, “ sources of provincial revenue, not included in previous heads:— (a) taxes included in the Schedules to the Scheduled Taxes Rules, (b) taxes not included in those Schedules, which are imposed by or under provincial legislation which has received the previous sanction of the Governor-General.”

Some taxes are known as Scheduled taxes as they are imposed by rules (*viz.*, Scheduled Tax Rules) framed under the Government of India Act of 1919. To impose such taxes the local authority must be authorised to impose them and the proposals for imposing them must have been sanctioned by the Local Government.

**Proviso:**—corresponds to the 3rd proviso to sec. 85 of B. M. Act.

Both the tax on holdings and the tax on persons may be imposed in the same municipality but both of them shall not be imposed at the same time in the same ward. If a municipality is not divided into wards it virtually consists of only one ward and both taxes cannot be in force in it at the same time.

**Sub-sec. (2):**—This clause is new and a similar provision is not to be found in the B. M. Act.

Fees for granting licences and renewals thereof which are not specifically provided for in sub-sec. (1) and which under this Act have to be granted by the Commissioners may be charged for by the Commissioners according to the scale of fees approved by the Local Government. The charging of fees must be passed by a resolution of the Commissioners at a meeting specially convened for the purpose before being levied.

Restrictions on the imposition of taxes on persons.

**83. The tax upon persons shall not be imposed on any person in respect of the occupation of any building which is used exclusively as a place of public worship or of any public burial or burning ground registered under section 248, nor, subject to the provisions of section 91, in respect of the occupation of any holding which contains any building the property of Government or of a local authority.**

#### NOTES.

The section corresponds to sec. 87 of B. M. Act. Personal tax cannot be imposed for the occupation of any building used exclusively as a place of public worship or for any public burial ground registered under section 248 or for the occupation of any holding which contains any Government buildings or buildings of a local authority. The third class, viz., buildings of the Government or of any local authority may under section 91 be assessed on the annual value of the holdings on which they stand; but the first two are absolutely exempt from personal tax.

In sec. 87 of B. M. Act by the amendment in 1894 "arable lands" were removed from the exemption and public burial and burning grounds were admitted to the exemption. In assessing the tax on persons the income derived from arable lands is no longer exempted and should be taken into account.

Arable lands are liable to pay personal or holding tax as the word "holding" in B. M. Act is wide enough to cover arable lands which is therefore liable to be assessed under the provisions of the B. M. Act. *Mahadeb Aon vrs. Chairman of the Howrah Municipality*, 37 Cal. 697.

**84. (1) The tax on holdings shall not be imposed at a rate exceeding seven and a half per centum on the annual value of holdings; except in the Patna City Municipality, in which it shall not exceed ten per centum on such annual value.**

Restrictions on the imposition of the tax on holdings.

(2) Any holding which is used exclusively as a place of public worship or religious assemblage, or as a dharmasala, or as a mortuary, or which is duly registered as a public burial or burning ground under section 248 shall be exempted from the tax on holdings.

(3) The Local Government may on the recommendation of the Commissioners at a meeting exempt any holding or part of a holding which is used exclusively for any charitable purpose.

(4) Where the aggregate annual value of all the holdings held by any one owner within a municipality does not exceed six rupees, the tax on holdings shall not be imposed on any of the holdings of the said owner.

#### NOTES.

**Sub-sec. (1):**—corresponds to sec. 85 cl. (b) proviso of B. M. Act.

This section fixes the limit of the maximum tax on holdings. The rate is fixed on the annual value of holdings and irrespective of the means of the occupiers, *i.e.*, not on the circumstances and properties of the occupier. What is meant by the annual value and how to arrive at it is given by sec. 98 and the method of assessment on the annual value is laid down in secs. 98 to 119.

The holding as referred to in this sub-section is a "holding" as defined in section 8 (9).

The words "annual value" in sec. 88 of the Calcutta Municipal Act (the wording of which is similar to sec. 82 (b) of this Act) was held to mean the annual letting value. *Nundoo Lal Bose vrs. The Corporation of the Town of Calcutta*, 11 Cal. 275.

The term holding as defined in sec. 85 of B. M. Act means land held by one occupier under one title or agreement and surrounded by one set of boundaries. *Syed Shah Hamid Hossein vrs. Patna Municipality*, 17 C.W.N. 812.

**Sub-sec. (2):**—corresponds to sec. 98 of B. M. Act.

The class of holdings referred to in this sub-section are exempted from payment of the tax on holdings; but before being exempted they must be shewn to be used exclusively as a place of public worship or religious assemblage or as a dharmasala or as a mortuary or as a registered burial or burning ground.

**Used exclusively:**—In Madras a question raised was whether a building known as the Dharma Sivachari Mattam was exempt from liability to pay the municipal "house-tax" as being a place of public worship within the meaning of sec. 119 of the Act, it was found that the Mattam was a place of

public worship and that it had been used intermittently as a residence by persons who paid no rent for their occupation of it and it was apparent that the building was also used for holding meeting of the caste and for feeding Brahmins, it was held that when the Mattam is in part or in whole used for purposes other than those of public worship it is liable to taxation (under sec. 119 of the City of Madras Municipal Act, Mad. Act V of 1878). The feeding of Brahmins although it may be meritorious is not what the Act contemplates as public worship. *Thambu Chetti Subraya Chetti vs. A. T. Arundal*, 6 Mad. 287.

A building used partly as a place of public worship and partly for other purposes would not be "exclusively used" as such and so would not be exempt from assessment under this sub-section.

If a portion of a Math or Dharmshala is used as a shop then the whole holding can be assessed to tax. If a portion of such an institution is devoted to any purpose other than its exclusive user for the purpose of public worship or religious assemblage, etc., then the whole holding becomes liable for the holding tax. There is no provision for exclusion of a part of a holding as in sub-sec. (8); there can be either a total exemption or assessment on the whole; partial exemptions are not contemplated by this sub-section.

In a case referred by the Bally Municipality to the Hon'ble Advocate-General for his opinion he recorded that "if the lands form one holding as described by the Act, it is necessary that the whole holding should be used exclusively as a place of public worship and therefore there must either be a total exemption or an assessment on the whole; there can be no partial exemption."

**Public worship:**—the act of performing devotional acts in honour of especially, the act of paying divine honours to the Supreme being.

**Religious assemblage:**—the act of assembling or state of being assembled of a set of men teaching or setting forth religion.

**Mortuary:**—a place for the temporary reception of the dead; a dead house.

**Sub-sec. (3):**—corresponds to sec. 98 cl. (2) of B. M. Act.

The definition of "charitable purpose" read with this clause will enable the Local Government to exempt from the tax on holdings certain educational institutions on the recommendation of the Commissioners at a meeting.

"Charitable purpose" is defined in sec. 3 (3) and includes the maintenance of an educational institution and the hostels attached thereto which though wholly or partly self-supporting is maintained without the purpose of profit.



" We prefer that holdings used for charitable purposes should be only exempted from payment of the taxes with the sanction of the Government rather than that they should be *ipso facto* exempted in the absence of orders to the contrary. We have also modified the definition of " charitable purposes " so as to include all schools other than those established with a view to profit (*vide* sec. 3, (3))." Report of the Select Committee, p. 36.

The word " charitable purposes " is defined in sec. 2 of the Charitable Endowments Act VI of 1890 as including education and the advancement of any object of general utility, or in other words, every purpose that is included in the Statute of Elizabeth (Statute 43 Eliz. c. 4). The expression has thus acquired a technical meaning in the Presidency of Bombay; " charitable purpose " in the Municipal Act should in the absence of anything in the Act to show a contrary intention on the part of the Legislature receive the technical meaning which it has acquired as including all purposes within the Statute of Elizabeth. It was further held that under sec. 143 (a) of the Bombay Municipal Act (Act III of 1888) the mere circumstance that small fees were required from students before examining them which produced a revenue insufficient to defray the expenses of the University in conducting those examinations and keeping up the necessary establishment and which required to be considerably supplemented by Government could not alter the essential character of the purpose for which the buildings were occupied and the mere fact that it derived a revenue from the occupation of the buildings could not take it out of the category of a building exclusively occupied for a charitable purpose. *The University of Bombay vrs. The Municipal Commissioners of Bombay*, 16 Bom. 217.

Certain buildings, the property of Government were lent to the plaintiffs free of rent for being used exclusively for educational purposes and the college started on them was not a proprietary institution managed by the plaintiffs for their own benefit but was purely a public one, the income derived from fees and other sources being wholly spent for the promotion and encouragement of education, the school buildings were held to be used exclusively for charitable purposes and that the imposition of the house tax and water tax under sec. 63 of the District Municipalities Act (Mad. Act IV of 1884) was illegal. *Fischer vrs. Twigg & others*, 21 Mad. 367.

The holdings in order to be exempted under this clause must also be exclusively used for charitable purposes the word " exclusively " did not occur in the corresponding section of the B. M. Act which ran thus " holding used for purposes of public charity."

Under this sub-section the whole or part of a holding used exclusively for a charitable purpose could be exempted but this could not be done in the

cases coming under sub-sec. (2) where there could be either total exemptions or assessment of whole and there could be no partial exemption.

**Sub-sec. (4):**—corresponds to sec. 85 cl. (b) proviso of B. M. Act.

“ Under the present Act (B. M. Act) an owner possessing a large number of small holdings of an annual value of less than six rupees each escapes payment of any tax on them even though they may bring in a handsome rental in the aggregate. The sub-clause grants exemption only where the annual value of all holdings of any one owner does not exceed six rupees.”  
Notes on Clauses, para. 46.

Restrictions on the  
imposition of the water  
and lighting taxes.

**85. (1) The imposition of a water tax or of a lighting tax shall be subject to the following restrictions, namely:—**

(a) that the tax shall be imposed only on holdings within an area for the supply of water to which, or for the lighting of which, as the case may be, a scheme has been sanctioned by the Local Government;

(b) that the tax shall not be imposed on land used exclusively for purposes of agriculture, or on any holding consisting only of tanks, or, in the case of the water tax, on any holding no part of which is within a radius, to be fixed by the Commissioners at a meeting, from the nearest stand-pipe or other supply of water available to the public;

(c) that the rate on the annual value of holdings at which the tax may be imposed shall not exceed seven and-a-half per centum in the case of the water tax, or three per centum in the case of the lighting tax;

(d) that in fixing the rate at which the tax is to be imposed regard shall be had to the principle that the total net proceeds of the tax, together with the estimated income from payments for water or lighting, as the case may be, supplied from the works under special contract or otherwise, shall not exceed the amount required for making, extending or maintaining the water-supply or lighting system, as the case may be, together with an amount sufficient to meet the proportionate share of the cost of supervision and collection as fixed under section 69 and the repayment of, and payment of interest on, any loan incurred in connection with any such supply or system;

(e) that the tax shall not be leviable until a supply of water has been provided in the area to be supplied, or until the lamps in the area to be lighted have been lighted, as the case may be, in the execution of a scheme adopted under Chapter IX, nor shall the tax be leviable for

any quarter or portion of a quarter antecedent to the provision of such water-supply or lighting.

(2) Nothing in this section shall prevent the Commissioners from making any special arrangement consistent with this Act for a supply of water or electric current or gas to persons residing beyond the radius fixed by the Commissioners at a meeting.

(3) With the sanction of the Local Government, the amount of the water-tax may vary with the distance of holdings from the nearest stand-pipe or other sources of water-supply, and the amount may be higher in the case of premises to which communication pipes are attached than in the case of other premises.

#### NOTES.

**Sub-sec. (1):**—clause (a) corresponds to secs. 37D & 279 & 308 of B. M. Act.

The two kinds of taxes, *viz.*, water-tax and lighting tax can be imposed only after the scheme for the supply of water or for lighting the streets have been sanctioned by the Local Government. The schemes requiring the sanction of the Local Government are schemes for water-supply, or for introduction of a system of lighting by electricity, gas or otherwise but not by ordinary oil lamps or for drainage on a big scale or for sewerage. See section 292 and notes thereto. No water tax can be imposed where there is no scheme for supply of water, supply of water from wells is not what is contemplated by this section. Similarly the lighting tax can be imposed only when gas or electric lights are set up and not when the streets are simply lighted by oil-lamps. See Chapter IX which relates to water-supply, lighting, drainage and sewerage systems.

**Clause (b):**—corresponds to sec. 279 cl. (3) proviso of B. M. Act.

This clause exempts from the liability to pay water and lighting taxes holdings exclusively used for agricultural purposes or holdings consisting of tanks only, water tax also cannot be realised from holdings so far distant from the nearest source of water-supply that they cannot therefore be expected to reap the full advantage of it.

Arable lands are exempt from lighting and water taxes by virtue of this clause; but they are not exempt from the personal tax or tax on holdings (See sec. 82, clauses a & b).

**Clause (c):**—corresponds to sec. 86 cl. (d) & (e) of B. M. Act.

This clause fixes the maximum water tax and lighting tax which can be levied. The water tax is not to exceed  $7\frac{1}{2}$  p. c. and the lighting tax 8 p. c. of the annual value of the holdings on which they are to be charged.

**Clause (d):**—corresponds to sec. 279 cl. (2) of B. M. Act.

The principle on which the water tax or lighting tax is to be levied is that the total receipts on account of such supplies shall just pay all the expenses of making, extending or maintaining the water-supply or lighting system and the cost of collection of the taxes and supervision of them and repayment of interest and principal of the loans taken for the scheme. Sec. 69 cl. (2) provides that monies received by the Commissioners for any specific object shall not be expended on any other object. The income derived from these taxes has to be spent on the three items mentioned above and not on any others.

**Clause (e):**—corresponds to sec. 310 of B. M. Act.

“ We have also made it clear that the lighting tax can only be imposed when a scheme for lighting by gas or electricity has been adopted.” Report of the Select Committee, para. 37.

The water tax and the lighting tax cannot be levied until the schemes come into working operation; nor can they be charged for any quarter or part thereof before they are actually in operation and confer the advantages for which they are intended.

**Sub-sec. (2):**—The Commissioners can arrange to supply water, gas or electricity to private persons residing in areas outside the limits for which they are established on such special charges as they may think proper or agree on.

**Sub-sec. (3):**—corresponds to sec. 279 (a) of B. M. Act.

It is fair to fix the amount of water tax according to the distance of the holdings from the nearest stand-pipe or source of supply. The Commissioners can do it with the sanction of the Local Government.

**36. The imposition of the latrine tax shall be subject to the following restrictions, namely:—**

**(a)** that the tax shall be imposed only on holdings containing dwelling-houses, latrines, urinals or cesspools, and on holdings containing shops or places of business in which, in the opinion of the Commissioners at a meeting, a latrine, urinal or cesspool is required;

**(b)** that the Commissioners at a meeting may exempt from payment of the tax any jail, reformatory or lunatic asylum in which an establishment is maintained for the cleansing of latrines, urinals and cesspools therein;

**(c)** that in fixing the rate at which the tax is to be levied regard shall be had to the principle that the total net proceeds of the tax shall

Restrictions on the imposition of the latrine tax.

not exceed the amount required for cleansing private and public latrines, urinals and cesspools, and for providing, extending or maintaining public latrines and urinals, together with the amount required to meet the proportionate share of the cost of supervision and collection as fixed under section 69 and the repayment of, and payment of interest on, any loan incurred in connection with this purpose;

(d) that the tax shall not be leviable in any area until the Commissioners have made provision for the cleansing of private latrines, urinals, and cesspools within such area, nor shall the tax be leviable for any quarter or portion of a quarter antecedent to the making of such provision;

(e) that the tax on any holding the valuation of which does not exceed twenty-five rupees shall not be more than three rupees per annum, and that the rate of the tax on any other holding shall not exceed the rate specified in sub-section (1) of section 84.

#### NOTES.

" We consider that the latrine tax can suitably be imposed on shops, etc., even though they do not contain latrines and have modified sub-clause (a) to secure this. We have also modified sub-clause (b) to make the exemption of jails, etc., discretionary with the Municipal Commissioners, to meet cases in which a jail, etc., does not make its own conservancy arrangements. In sub-clause (e) we have removed the maximum of Rs. 480 and provided that the rate of tax shall not exceed the rate fixed for the holding tax." Report of the Select Committee, para. 38.

**Clause (e) in the Original Bill stood thus:—**" that the tax on any holding the valuation of which does not exceed twenty-five rupees shall not be more than three rupees per annum and that the tax on any holding shall not exceed four hundred and eighty rupees."

**Clause (a):—**corresponds to sec. 321 of B. M. Act.

In the Bengal Act the latrine tax could be levied only from holdings containing dwelling houses or privies; but under this section latrine tax can be imposed not only on holdings containing dwelling houses, latrines, urinals or cesspools but also on holdings on which there are shops or other offices whether there are any latrines, urinals or cesspools on them or not, but in which in the opinion of the Commissioners at a meeting there ought to be such arrangements.

**Dwelling houses:—**To " dwell " is " to live and occupy for all the purposes of life." A house in which a person occupied rooms though he was absent occasionally on duty might be properly described as " dwelling

house." *Radha Govinda Mondal vs. Kumarkhali Municipality*, 19 C.W.N. 1027.

A municipal holding contained a Thakurbari where pilgrims who did not find shelter elsewhere remained for up to three days at a time during festivals and received *prosad* from the Thakurbari. There were no privies on the premises and the pilgrims used privies in the house of the *shebaita* and there was no evidence as to what action the municipality took for the purpose of conservancy within the holding, held that the holding was not and did not contain a dwelling house within the meaning of sec. 321 of B. M. Act. The Chairman of Navadip Municipality *vs. Gour Chandra Goswami*, 25 C.W.N. 827=49 I.C. 16. 38 I.C. 789 contains the judgment of remand of this case for certain findings and it was held then that to determine whether any premises are used as a dwelling house it has to be seen how long they are occupied in a year, whether natural functions are performed there by the residents, whether permanent or temporary and what action the municipality has taken for the purposes of conservancy.

When the owners of the house lived in the upper storey thereof and let out eight shops in the verandah of the ground floor, none of which were thus occupied by himself held that he could not claim exemption under the proviso to sec. 322 of B. M. Act and the house including the shops was liable to be valued for the purpose of assessment of latrine tax. The meaning of the proviso to sec. 322 is that when a shopkeeper lives elsewhere and pays latrine tax for his house he shall not be made to pay again for his shop unless the shop contains a privy or cesspool. *Beechu Ram vs. The Chairman, Chapra Municipality*, 15 C.W.N. 519=13, C.L.J. 674. But this is a ruling under the Bengal Act by which shops or other places of business not containing privies could not be assessed with latrine tax, if the occupiers of them paid latrine taxes in respect of their dwelling houses. See sec. 322, *proviso* B. M. Act.

**Clause (b) :—**corresponds to sec. 334A of B. M. Act.

See Report of the Select Committee, para. 38 quoted *ante* in the notes to this section.

The Commissioners at a meeting may exempt any jail reformatory or lunatic asylum from payment of the tax when they employ their own men for the purposes of cleansing their latrines, urinals, etc.

**Clause (c) :—**See sec. 85 (1) (d) *ante* and notes thereto.

The latrine tax is to be fixed on this principle that the total collections on this head should just meet the following expenses, viz. (1) of cleansing public latrines, urinals & cesspools (2) of providing, extending or maintaining

public latrines, and urinals (3) cost of collection of the tax and supervision of them and (4) repayment of interest and principal of any loan incurred in those works.

According to the Bengal Act latrine tax used to be levied on a certain scale fixed by the Commissioners for cleansing private privies and cesspools only, under secs. 320 and 321 of B. M. Act, and public latrines used to be maintained and cleansed out of the general municipal fund. See sec. 193 of B. M. Act. Under this section the proceeds of the latrine tax can be spent in cleansing and maintaining public latrines and not in cleansing private latrines, urinals and cesspools only. See Notes on clauses quoted under clause (d).

**Clause (d) :—**corresponds to sec. 321 of B. M. Act.

See sec. 85 (1) (e) and notes thereto.

“ Though the proceeds of the conservancy tax will be expended on general conservancy as well as on the cleansing of private latrines, urinals and cesspools the tax will not be levied until provision has been made for the cleansing of private receptacles.” Notes on Clauses, para. 47.

**Clause (e) :—**corresponds to sec. 321 of B. M. Act.

Latrine tax has to be based on the annual value of holdings. See sec. 82 (1) (e) the rate of this tax is not to exceed  $7\frac{1}{2}$  p. c. of the annual value of the holding but in the case of holdings the annual value of which do not exceed Rs. 25 the tax shall not be more than Rs. 3 per annum.

**Annual value :—**what is the annual value and how to arrive at it, see sec. 98 and notes thereto.

Under the Bengal Municipal Act sec. 321 the Commissioners at a meeting had to fix a scale of fees to be levied as latrine tax before imposition of the tax and if this was not done the tax was *ultra vires*. *Bechu Ram vs. Chairman of Chapra Municipality*, 15 C.W.N. 519=13 C.L.J. 674. But under the present section no such scale of fees has to be framed, the latrine tax is fixed on the same percentage of the annual value of the holdings as the other taxes, viz., holding taxes, water taxes.

Compounding of latrine tax. **87. (1) The Commissioners at their discretion may compound for any period not exceeding one year, with the person liable to pay the latrine tax on any railway premises or on any premises used as a factory, dookyard, workshop, coolie-depot, school, hospital, market, court-house, jail, reformatory, lunatic asylum or other similar place, for a certain sum to be paid by such person in lieu of the tax or, in the case of such premises or places, may, in lieu of levying the tax on the annual value of the holding, levy it at a rate per**

head to be fixed by the Commissioners at a meeting, on the number of persons living within or habitually resorting to such premises or places.

(2) The Commissioners may by a notice in writing require the owner or occupier of any such place to furnish, within a time to be specified in the notice, a statement of the number of persons residing in or habitually resorting to, such place.

(3) Any owner or occupier of such place who fails to furnish such statement within the time specified in such notice, after being required to furnish the same by the Commissioners, shall be liable to a fine not exceeding one hundred rupees.

#### NOTES.

\*The section corresponds to secs. 325 & 326 of B. M. Act.

**Sub-sec. (1):**—For certain class of premises, e.g., railway premises or premises used as a factory, dockyard, workshop, etc., the Commissioners are given power to compound the taxes and fix a certain sum in consideration of the services to be rendered by them. In the case of such premises it often happens that a large number of people congregate there and greater services from the municipality are required and the ordinary latrine tax based on the annual value of such holdings is found to be inadequate for the services to be rendered. It is for this reason that Commissioners are given power to compound the taxes and fix a certain sum in consideration of the services to be rendered and the sum so fixed remains in force for one year only. The Commissioners may also levy the tax on such premises at a certain rate per head the rate having been fixed by the Commissioners at a meeting.

**Sub-sec. (2):**—corresponds to sec. 333 of B. M. Act.

This section enables the Commissioners to require the owners or occupiers of the premises mentioned in sub-sec. (1) to furnish them with a statement of the number of persons residing in or habitually resorting to such places when the Commissioners intend to proceed under sub-sec. (1).

**Sub-sec. (3):**—corresponds to sec. 334 of B. M. Act.

This section prescribes the penalty for disobedience of the notice under sub-sec. (2).

**33. (1)** Notwithstanding anything contained in the foregoing sections, the Commissioners, in lieu of imposing separately any two or more of the taxes described in section 32 sub-section (1), clauses (b), (c), (d) and (e), may, at a meeting convened expressly for the purpose, of which due notice has been given,

Power to impose consolidated tax.



and with the sanction of and subject to the conditions laid down by the Local Government, impose a consolidated tax, at such rate as they deem fit, assessed on the annual value of holdings situated within the municipality.

(2) Such consolidated tax shall be payable in such proportions by the owners and occupiers of holdings as the Commissioners, with the approval of the Local Government, may determine.

#### NOTES.

This section is new and a similar provision is not to be found in the B. M. Act.

"The consolidation of the taxes assessed on the annual value of holdings will greatly facilitate and cheapen the work of collection and at the same time relieve the rate-payers from the trouble of separate payments." Notes on Clauses, p. 48.

The taxes described in sec. 82 sub-sec. (1). (b), (c), (d) and (e) viz., holding tax, water tax, lighting tax, and latrine tax have all to be assessed on the annual value of holdings and the consolidation of any two or more of them into one cannot inconvenience the rate-payers and there is this advantage to the municipality that it facilitates and cheapens the work of collections.

But the consolidation of the taxes must be done with the sanction of and subject to the conditions laid down by the Local Government, by the Commissioners at a meeting convened expressly for the purpose. In such a meeting the rate at which the consolidated tax is to be imposed must be fixed before it can be imposed.

**Sub-sec. (2):**—the consolidated tax is to be paid in such proportions by the occupiers and owners as the Commissioners may fix with the approval of the Local Government. Owners of holdings have to pay the following taxes, viz., holding tax, water tax, lighting tax. Occupiers have to pay the following tax, viz., latrine tax. See sec. 100 and notes thereto. So when the taxes are consolidated under sub-section (1) the proportions of it which has to be paid by the owner and which has to be paid by the occupier have to be determined under this sub-section by the Commissioners.

## II. ASSESSMENT OF TAXES.

### (A) ASSESSMENT OF TAXES ON PERSONS.

Assessment list to be prepared. **89. When it has been determined that a tax shall be imposed on persons in sole or joint occupation of holdings within the municipality, according to their circumstances and**

property within the municipality, the Commissioners, after making such inquiries as may be necessary, shall cause to be prepared an assessment list which shall contain the following particulars, and any others which the Commissioners may think proper to include:—

- (a) the name of the road in which the holding is situated;
- (b) the number of the holding on the register;
- (c) the name of the person or persons in sole or joint occupation of the holding, who is or are liable to assessment;
- (d) a description of the holding, and of the property within the municipality, and the profession or business of the person or persons assessed;
- (e) the amount of annual assessment;
- (f) the amount of quarterly instalment; and
- (g) if any person in occupation of the holding is exempted from assessment, a note to that effect.

#### NOTES.

The section corresponds to sec. 87 of B. M. Act. See also notes to sec. 82 *ante*.

After the Commissioners at a meeting determine to impose a tax on persons under sec. 82 cl. (a), the next step is to prepare an assessment list containing the particulars mentioned in the section after such enquiries as to the circumstances and properties of persons within the municipality and as to whether any person is in sole or joint occupation of any holding within it, as the Commissioners think proper.

**Sole or joint occupation:**—see notes to sec. 82 cl. (a).

**Circumstances and property:**—see notes to sec. 82 cl. (a).

The procedure prescribed by the Act should be followed in all its essential details. See notes to secs. 43 & 57 (2) as to how the meetings are to be called and notice given to all the Commissioners.

In construing the Act, so far as it invests the Municipal Commissioners with power to tax the subject; its provisions must be scrutinised very closely and construed with the utmost strictness. *Dwarka Nath Dutt vrs. Addya Sundari Mittra*, 21 Cal. 319 (325).

**Clause (d):**—the assessment is not invalid for error or defect of form. See sec. 380.

When an assessment has been once confirmed by the Appeal Committee under sec. 114 B. M. Act the fact whether the assessor who made the

assessment was or was not legally qualified to make the assessment and the validity of the assessment could not be impeached. *Chairman of Chittagong Municipality vs. Jogesh Chandra Rai*, 37 Cal. 44.

Under sec. 118 the Local Government can interfere when the assessment is insufficient or inequitable. See notes to sec. 118.

When the assessment list did not show the income or description of properties upon which the tax was assessed, held that this was a defect of form and did not invalidate the assessment. There is clearly no foundation for the sweeping proposition that every defect in the assessment prepared under sec. 87 destroys the jurisdiction of the Commissioners and renders the assessment *ultra vires*. *The Chairman, Jalpaiguri Municipality vs. The Jalpaiguri Tea Co., Ltd.*, 26 C.W.N. 311=84, C.L.J. 283.

**Holdings:**—see notes to sec. 82 cl. (a) and def. sec. 3 (9).

The word "holding" in the B. M. Act is wide enough to cover arable lands which therefore liable to be assessed under the provisions of the Act. *Mahadeb Aon vs. Chairman, Howrah Municipality*, 37 Cal. 697. In assessing the tax on persons the income derived from arable land is no longer exempted and should be taken into account; income from such lands are included within the "means" or "circumstances" of the person.

**Persons legally exempt from assessment.**—Owners of buildings used exclusively as a place of public worship or of any registered public burial or burning grounds or of holdings containing buildings belonging to Government or any local authority are exempt from personal tax in respect of the holdings. See sec. 88 and the notes thereto *ante*.

**Duration of assessment.** **90.** Save as is herein otherwise provided, every assessment of the tax upon persons shall take effect from the beginning of the year next following that in which the notice required by section 115 is published, and shall be valid for three years and until the beginning of the year next after the date on which a new assessment list may be published or until the assessment list be revised and amended:

Provided that, when this Act is extended to any place, the first assessment may take effect from the beginning of the quarter next following that in which the said notice is published.

#### NOTES.

The sec. corresponds to sec. 88 of B. M. Act.

As soon as the assessment list is prepared the Chairman after signing the same shall give public notice by beat of drums, etc. (see sec. 115) and keep it open for inspection. This provision ensures that the tax-payers

shall have full notice of the amount for which they are assessed. The notice must be published first according to sec. 115 before the tax can have any legal existence and after it is so published the tax will come into force.

There shall be a legally sanctioned tax at the period at which the duties are to be performed; and the proposition so implicitly contained is, as a result of legal logic, as clear and binding as if it had been explicitly declared. *Leman vs. Damodaraya*, 1 Mad. 158. In a case from Bellary it was decided that to render a person liable a tax must be legally in existence at the beginning of the year for which it is demanded, 7 M.H.C.R. 249.

The tax on persons remains in force for three years, *i.e.*, from the beginning of the next year after the date of the publication of notice and till the beginning of the year next after the date on which fresh assessment list is published. When the Act is extended to any place, the first assessment may take effect from the next quarter after the date of the publication of the notice.

Exception in case of occupation of holdings belonging to Government or a local authority.

**91. In any municipality in which a tax on persons is imposed, a rate, not exceeding ten per centum, may be assessed on the annual value of any holding which contains any building the property of Government or of a local authority, and such rate shall be payable by the Local Government or the local authority concerned.**

#### NOTES.

The sec. corresponds to sec. 89 of B. M. Act.

Sec. 83 enacts that the tax on persons shall not be imposed on any person in respect of the occupation of any holding which contains any buildings the property of Government or of a local authority, but under this section such owners may be assessed on and up to ten per centum of the annual value of such holdings, in lieu of the personal tax.

**Special powers of Government.** As to Government buildings special powers are reserved to the Government by the Municipal Taxation Act of 1881 (Act XI of 1881). Government has power under sec. 3 of the Act to prohibit the levy by a municipality of any specified tax, (a) payable by a person subject to the Army Discipline Act, 1879, or the Indian Articles of War who is compelled by the exigencies of military duty to reside within a municipality; or (b) payable by the Secretary of State for India in Council and the Act provides what tax shall be levied in such cases. The Act was passed to enable the Government to deal promptly and simply with cases when the assessment made by a municipality was improper or excessive.

**As to Railway property.** “ Sec. 135 (1) of the Indian Railways Act declares that a railway administration is not liable to pay any tax in aid of the funds of any local authority unless the Governor-General-in-Council has by notification in the official Gazette declared the railway administration to be liable to pay the tax. The object of the Legislature is to obtain control over the demands made on railway administration by local authorities, it is not to relieve them altogether from local taxation, for there is no reason why they should not bear their fair share of the general taxation imposed for purposes by which they directly or indirectly benefit nor why they should not pay for such specific services in the shape of water-supply, scavenging, etc., as may be actually rendered.”

**Resolution No. 9977 Rys., dated 29th November 1907.** Notification by the Government of India, Department of Commerce and Industry which is now in force run thus:—“ In pursuance of clause (1) of sec. 135 of the Indian Railways Act 1890 (IX of 1890) and in supersession of the Notifications of the Government of India in the Public Works Department, No. 270 dated the 12th June, 1890, and No. 136 dated the 5th April, 1893, the Governor-General-in-Council is pleased to declare that every Railway administration in British India shall hereafter be liable to pay, in respect of property within any local area, every tax which may lawfully be imposed by any local authority in aid of its funds, under any law for the time being in force.” J. Pargiter's B. M. Act, p. 118.

**Local authority :—**means a Municipal Committee, District Board or any other authority entrusted by the Government with or legally entitled to the control or management of a municipal or local fund. Sec. 4 (30) of B. & O. General Clauses Act (Act I of 1917).

**92. The amount assessed upon any person in respect of the occupation of any holding for the purpose of the tax on persons shall not be more than one hundred and twenty rupees per annum.**

Limit of assessment.

## NOTES.

Corresponds to sec. 85 (a) proviso of B. M. Act.

“ It is proposed to raise the maximum payment in the case of the tax on persons from Rs. 84 to Rs. 120 per annum. Even in the smallest municipalities there are some persons who might fairly be called upon to pay tax at Rs. 10 a month.” Notes on Clauses, p. 49.

This section applies to a single holding and the limits of the assessment is as regards each holding.

Powers of exemption.

**83. (1)** The Commissioners may exempt from assessment any person who may by them be deemed too poor to pay the tax on persons.

**(2)** The Local Government may, on the recommendation of the Commissioners at a meeting, exempt any person in sole or joint occupation of a holding which is used exclusively for charitable purposes.

#### NOTES.

The section corresponds to sec. 91 of B. M. Act.

**Sub-section (1).** The exemption may be made at any time, and a note to that effect is to be made in the assessment list [sec. 89 (g)]. This section relates to exemption from payment of tax on persons. The Commissioners mean the whole body of Commissioners and they act through the Chairman. This exemption can be granted by the Chairman. See sec. 24 and notes *ante*.

The petition under this clause is exempt from court fees under sec. 19 cl. (xxi) of Court Fees Act (Act VII of 1870).

**Sub-section (2)** corresponds to sec. 98 of B. M. Act.

The power to exempt any person in sole or joint occupation of any holding used exclusively for charitable purposes from payment of the personal tax rests with the Local Government acting on the recommendation of the Commissioners at a meeting.

**Charitable purposes:**—see def. sec. 3 (3) and sec. 84 and notes thereto.

**94.** If any person mentioned in the assessment list has, at any time after the publication thereof, ceased to occupy any holding in respect of the occupation of which he has been assessed, or if the means and property in respect of which he has been so assessed, have been reduced, the Commissioners may on his application exempt him from his assessment, or may revise the same; and such exemption or revision shall take effect from such date as the Commissioners may direct.

Power to reduce assessment in altered circumstances.

#### NOTES.

This section corresponds to sec. 92 of B. M. Act.

Reduction of tax on the two grounds, *viz.*, ceasing to occupy the holding, or if the means and property of the assessee is reduced and becomes not assessable, can be made at any time. See sec. 116 and notes thereto. When a deduction is granted a note to that effect has to be made in the assessment list. See sec. 89 (g).

Petitions praying for reduction of tax is exempt from court fees. Sec. 19 cl. (xxi) Court Fees Act.

**Means and property.** The tax being a personal one and being based on the circumstances and property of an occupier as soon as he ceases to occupy a holding and another takes his place, the old valuation on his application comes to an end *per se*; the Commissioners must re-assess the new occupier according to his circumstances and property under secs. 95 & 96. As to the meaning " means and property " see sec. 82 cl. (a) and notes *ante* and the rulings discussed there.

Government also has special powers to revise assessment made on its own property and on persons in military service and properties of other local authorities. See sec. 91 and notes thereto

**95. (1) The Commissioners may, at any time after the publication of the notice required by section 115, assess any person who was without authority omitted from the assessment list, or whose liability to assessment has accrued thereafter, and may enhance any assessment which appears to them to be inadequate, and to have been so made owing to mistake or fraud.**

**(2) Any assessment or enhancement made under this section shall take effect from the beginning of the quarter next following that in which such assessment or enhancement is made.**

#### NOTES.

The section corresponds to sec. 93 of B. M. Act.

The alterations referred to in the section can be made at any time and they have to be noted in the assessment list.

**Enhancement of assessment.** Two conditions are necessary for enhancement namely, the assessment must appear (1) to be inadequate and (2) to have been so made owing to mistake or fraud. If any person is omitted from the assessment list without authority or if his liability to assessment has accrued after the publication of the list under sec. 115 and if the two conditions mentioned above are satisfied then the enhancement can be legally made.

"Enhancement of assessment" means a monetary addition to the existing assessment of the same property which had been originally included in one and the same assessment. To break up the original assessment and to convert what was originally one assessment on the whole property into two assessments on two separate properties (that is to say, to convert the one assessment on the whole into two assessments upon the granary and

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threshing floor separately) is not an assessment within the meaning of the section, but the creation of a new and independent assessment upon a property which previously had not been separately assessed and the municipality was not empowered under sec. 93 of B. M. Act to do this. *Nawadip Chandra Pal vs. Purnanand Saha*, 3 C.W.N. 73.

The splitting of a holding held under one title and surrounded by one set of boundaries into two separate holdings and separate valuation and assessment thereof is not justified under the B. M. Act. *Tarapada Mazumdar vs. Satish Chandra Saha*, 46 Cal. 784.

Procedure on change of occupation.

**96. The Commissioners may at any time substitute for any name mentioned in the assessment list the name of any new occupier or joint occupier of a holding, and may assess the tax on such person, and such person shall be liable to pay such assessment from the date on which his occupation of the holding commenced.**

#### NOTES.

The section corresponds to sec. 94 of B. M. Act.

See sec. 94 *ante* and notes thereto. In such a case the new assessee is entitled to a new assessment on his circumstances and property within the municipality and the provisions of sec. 95 apply as his liability accrues after the assessment list is published under sec. 115.

Assessment on vacant holdings when to cease.

**97. If any holding becomes vacant in course of the year, the assessment on account of the occupation of such holding shall cease to have effect from the first quarter next following that in which it becomes vacant.**

#### NOTES.

The section corresponds to sec. 95 of B. M. Act.

Vacant holdings are exempted from the tax from the beginning of the next quarter after the date in which they fall vacant.

#### (B) ASSESSMENT OF TAXES ON THE ANNUAL VALUE OF HOLDINGS.

Annual value of holdings.

**98. (1) The annual value of a holding shall be deemed to be the gross annual rental at which the holding may reasonably be expected to let.**

**(2) If there be on the holding a building or buildings, the actual cost of erection of which can be ascertained or estimated and which is or are not intended for letting or for the residence of the owner himself, the annual value of such holding shall be deemed to be an amount**



which may be equal to, but not exceed, seven and-a-half per centum on such cost, in addition to a reasonable ground rent for the land comprised in the holding;

Provided that, where the actual cost so ascertained or estimated exceeds one lakh of rupees, the percentage on the annual value to be levied in respect of so much of the cost as is in excess of one lakh of rupees shall not exceed one-fourth of the percentage determined by the Commissioners under section 104.

(3) The value of any machinery or furniture which may be on a holding shall not be taken into consideration in estimating the annual value of such holding under this section.

#### NOTES.

The section corresponds to sec. 101 of B. M. Act.

" The clause makes it clear that where the annual rent of a holding can be ascertained, the gross annual rental will be taken to be the annual value; it will only be where such rental cannot be ascertained that recourse will be had to the cost of erection of buildings on the holding. The insertion of the words " or furniture " in sub-clause (3) is designed to prevent assessment being made on the higher rent which is naturally paid for a furnished house." Notes on Clauses, p. 50.

**Sub-sec. (1):**—The section must be read with sec. 82 (1) (b). It may be regarded as of the nature of an interpretation clause explaining the meaning of the term " annual value " used in the section and how it is to be ascertained. The methods provided in ascertaining the " annual value " are, (1) by finding the gross annual rental and (2) by finding the cost of construction of the buildings standing on the holding. In the first case the gross annual rental is the annual value and in the second case  $7\frac{1}{2}$  p. c. of the cost of construction together with a reasonable ground rent for the lands in the holding, is taken as the annual value; if the cost of construction exceeds one lakh of rupees the annual value on the lakh is calculated at  $7\frac{1}{2}$  p. c. and on the excess over it at the rate which may be up to one-fourth of the percentage determined by the Commissioners under sec. 104.

**Annual value:**—The whole system of taxation and assessment under the Act (Calcutta Municipal Act) in question is obviously borrowed in its general outlines from English Rating Acts. In such Acts in England the words " annual value " are in familiar use and have long received a settled construction. " Annual value " has always been held to mean annual letting value and the words have the same meaning here. Nundo Lal Bose *vs.* The Corporation of the Town of Calcutta, 11 Cal. 275.

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The meaning of the term in this Act is the annual rent at which a holding may be reasonably expected to let; and it is the gross rent and not the net rent. The measurement of the annual value by the gross annual rent at which a holding may be reasonably expected to let constitutes a uniform rule of assessment for all holdings. This does not necessarily depend on what the rent may be from month to month; it is the gross annual rent, that may be reasonably expected which constitutes the standard. The standard value is the value which the building possesses at the time the assessment is made. The value of the property in the past or future is immaterial. The present value is not the value of any exceptional year but the value which the building would be worth to let in an average year or taking one year with another.

Neither exceptional repairs nor exceptional profits made in a particular year are to be considered. Secretary of State *vs.* Municipal Commissioners of the City of Madras, 10 Mad. 38.

**Sub-sec. (2). Determination of the value.** Where holdings are rented out the ascertainment of the annual rent presents no difficulty; but where holdings are not occupied by their owners and are never let out the determination of the reasonable gross annual rental becomes difficult. Such cases are schools, Government buildings, hospitals, etc.

In letting a building from year to year the rent would ordinarily be regulated by two matters as observed by Blackburn. J. in *The Queen vs. London and North-Western Railway, Co.*, (L.R.9 Q.B. 134) on the one hand by the benefit which the tenant could be likely to derive from the occupation, because he would not give more than the benefit, and on the other hand by the nature of the property such as local situation or the number of persons there are who could supply him with an equally eligible building and be willing to let it to him, for while he would not be willing to give more than he expects to gain by the occupation he would not give even that if he could get a similar building at a lower price. Further, in rating property, it must generally be assumed that the hypothetical tenant would be in the same position and use the building in the same way as the party, rated, for the object is to ascertain its intrinsic value to the owner in its present condition. J. Cave in *The Queen vs. The School Board of London* (55 L.J.Q.B.D. 53) said: "When you want to find what a hypothetical tenant will give, you must not take a man who does not want the premises for the use for which they are built, but wants to use them for some other purpose, unless you can first show that they cannot be let for the purpose for which they are built. If they cannot be let for the use for which they are built then no doubt you may go and see what you can do with them for some other purpose and the

best subsidiary purpose you could put them to. But as long as they can be left for the purpose for which they are built, it seems to be idle to say 'well if this man were not occupying them, they could not be let to anybody else.' "

Relying on the principles of the two English cases cited above their Lordships of the Madras High Court on a construction of sec. 123 of City of Madras Municipal Act (a similar section) held that the standard value was what a tenant requiring the building for use as a hospital would consider it reasonable to pay from year to year rather than resort to renting a less suitable building and adopting it to his requirements at his expense. In that sense the standard value was the higher reserve rent which the owner of the property offering it in the open market would reasonably demand and below which sum he would not be willing to let. *Secretary of State vrs. Municipal Commissioners of Madras*, 10 Mad. 88.

In cases in which there are buildings which are not intended for letting or for residential purposes this sub-section now allows the "annual value" of such holdings to be calculated at a certain percentage on the actual cost of erection of the building together with the rental of the site subject to the limits that the percentage shall not exceed  $7\frac{1}{2}$  p.c. on such cost and that the ground rent shall be reasonable in amount. It meets the case also of other large buildings which have no actual letting value. Where there are buildings which are intended for letting or residential purposes the gross annual rent on which the holding together with the buildings can reasonably be expected to let is its annual value.

**Sub-section (3):**—See Notes on Clauses, para. 50 quoted in the notes to this section *ante*. Higher rent is naturally paid for a furnished house and it varies with the nature and quality of the furnitures supplied. This sub-section provides that furnitures and machinery existing on a holding should not be taken into consideration in calculating the annual value of the holding.

**Machinery:**—The word "machinery" means something more than a collection of ordinary tools. It must mean something more than a solid structure built upon the ground whose parts either do not move at all or if they do move, do not move the one with or upon the other in interdependent action with the object of producing a specific and definite result. A balancing tank nor its supporting structures nor both combined are "machinery" within the meaning of sec. 101 of B. M. Act. The value of these works were properly taken into consideration in making the assessment on the holding. *Corporation of Calcutta vrs. Chairman of the Cassipur and Chitpur Municipality*, 26 C.W.N. 761 (P.C.)=49 Cal. 190. The judgment of the Calcutta High Court which was appealed against is given in 28 C.W.N. 727 =46 Cal. 910.

Powers of commissioners to decide questions arising out of the definition of 'holding.'

**99. For the purposes of, and subject to clause (9) of section 3—**

**(a) if a question arises whether any property is included within one holding, the decision thereof shall rest with the Commissioners at a meeting;**

**(b) the Commissioners at a meeting shall decide, in regard to holdings in general or to any class of holdings in particular, what tests shall be applied for determining whether properties within the municipality are held under one title or agreement.**

#### NOTES.

This section is new and there is no corresponding section in the B. M. Act.

“ The definition of “ holding ” has given rise to difficulties in the past owing to the uncertainty as to the proper interpretation of the words “ under one title and agreement.” In the case of a sub-lease the existing Act does not specify whether the lessor or the sub-lessor is to be taken to be the owner. The provision of Clause 101 (sec. 99) of the Bill will enable the Commissioners to decide any question that may arise in this connection.” Notes on Clauses, p. 7.

Whenever any question whether certain property is included in one holding or not arises the Commissioners shall decide it at a meeting. The Commissioners shall also prescribe in a meeting tests for the determination of questions whether certain properties are held under one title or agreement or not and when they are to be included under one holding.

Taxes by whom payable.

**100. (1) Any tax which is assessed on the annual value of holdings, other than the latrine tax, shall, subject to the provisions of sections 133 and 134, be payable by the owners of holdings within the municipality.**

**(2) The latrine tax shall, subject to the provisions of section 135, be payable by the persons in actual occupation of holdings within the municipality.**

#### NOTES.

The section corresponds to sec. 103 of B. M. Act.

“ Under the Bengal Act the tax on the annual value of holdings is alone payable by the owner, the water-rate, lighting rate and latrine fees are paid by the occupier. Under this clause all such taxes, excepting the conservancy tax will be payable by the owner, though in the case of the water-tax,

under clause 185 (sec. 184) the owner will be empowered to recover three-quarters of the amounts paid by him from the occupier. The reasons for the change are that by this arrangement it will be possible to consolidate taxes, and collection will be facilitated, and that it is really the owner who has a permanent interest in the improvement of the amenities of the municipality. A good water-supply and the proper lighting of the road attract tenants to their houses. It must be remembered that the main object in the matter of the lighting tax is to provide for the maintenance of good lights in the road, while the water-tax is to maintain a service of water connections and stand pipes in public roads and places. The occupier will have to pay separately for house connections, whether for water or light and will also have to pay for water in excess of a certain quantity or light supplied to his house. It is doubtful whether the owner should not also contribute some portion of the conservancy tax. As a matter of practice most leases contain the conditions that the occupier shall pay all municipal taxes and while it will be for the parties to arrange the matter of payments between themselves the Municipal Commissioners will have to deal only with the owners." Notes on Clauses, para. 52.

All taxes which are based on the annual value of holdings, *i.e.* holding tax, water tax and lighting tax except the latrine tax are payable by the owners because the owners are the persons who have a permanent interest in the improvement of the amenities of the municipality and it will be to their interest to improve these things so that their holdings will be attractive to tenants and thus become profitable to them. Where the owner is non-resident and cannot be found, the holding tax can be recovered from the occupier, who in turn can deduct the amount so paid from the rents payable by him to the owner (sec. 183). Similarly when the water tax has been realised from the owner who is not the occupier and who is responsible for it sec. 184 gives him the right to recover three-fourths of the total tax from the occupier as the latter gets the direct benefit of the water-supply during the period of his occupation. So also in the case of the latrine tax although occupier is the person who is primarily responsible for it, yet if the holding is occupied by several tenants, the tax may be realised from the owner who in turn can realise the amount of tax from the various occupiers in proportion of their respective occupations (sec. 185).

A co-sharer who is not in actual possession and enjoyment of a holding within the jurisdiction of the Municipality, is not liable for water rate and latrine fee. Every owner is not an occupier, just as every occupier is not an owner. In order to constitute rateable occupation, there must be a use and enjoyment which is or is capable of being beneficial. Bare ownership does

secs. 101-102

not constitute rateable occupation. *Khaje Samshuddin vrs. Peari Lal Das and others*, 40 C.L.J. 295.

Preparation of  
valuation list.

**101. When it has been determined to impose any tax to be assessed on the annual value of holdings, the Commissioners, after making such enquiries as may be necessary, shall determine the annual value of all holdings within the municipality as hereinafter provided, and shall enter such value in a valuation list.**

#### NOTES.

The section corresponds to secs. 96 and 101 of B. M. Act.

When the Commissioners at a meeting subject to the provisions of this Act and the sanction of the Local Government have determined to impose any tax based on the annual value of holdings, the next step for them is to determine the annual value of the holdings after making such enquiries as they consider necessary and these valuations have to be entered in the valuation list whether they are taxed or not. The valuation is to be determined as explained in sec. 98.

If the assessment is insufficient or inequitable, under the provisions of sec. 113 the Local Government can remedy the same. See notes to sec. 113.

Returns required for  
ascertaining annual  
value.

**102. The Commissioners, in order to prepare the valuation list, may, whenever they think fit, by notice require the owners or occupiers of all holdings to furnish them with returns of the rent or annual value thereof and a description of the holdings containing such particulars as the Commissioners may direct; and the Commissioners, or any person authorized by them in writing in that behalf, at any time between sunrise and sunset, may enter, inspect and measure any such holding after having given forty-eight hours' previous notice of their intention to the occupier thereof:**

**Provided that where an assessor is appointed, such assessor shall not be competent to authorize any other person to enter, inspect and measure any such holding.**

#### NOTES.

The section corresponds to sec. 99 of B. M. Act.

"Sec. 99 of the Bengal Act authorizes the Commissioners to require owners or occupiers to furnish them with returns of rent or annual value only. For the purpose of preparing the valuation list accurately other particulars may be necessary, and the clause empowers the Commissioners to call for them." Notes on Clauses, p. 53.

The informations which may be required are as to the annual rents received or annual value and descriptions of the holdings giving such details as the name of the lodgers and other particulars as may be needed.

This section empowers the Commissioners or their agents authorised for the purpose to enter, inspect and measure any such premises for verification of the returns submitted by the owners or occupiers after due notices to the persons concerned.

Whenever any assessor is appointed under sec. 87 of the Act he must himself enter, inspect and measure any holding if necessary and cannot depute any other officer for the purpose.

The returns called for under this section must be filed within a week of the service of the requisition and failure, to comply with such requisition is penalised by the next section (sec. 103).

**Penalty for default in furnishing return.** **103. (1) Whoever refuses or fails to furnish any such return or description for the space of one week from the day on which he has been required to do so, or knowingly furnishes a false or incorrect return or description shall be liable to a fine not exceeding twenty rupees and to a further daily fine not exceeding five rupees for each day during which he omits to furnish a true and correct return.**

**(2) Whoever hinders, obstructs or prevents any Commissioners, or any person appointed by the Commissioners, as aforesaid, from entering or inspecting or measuring any such holding shall be liable to a fine not exceeding two hundred rupees.**

#### NOTES.

The section corresponds to sec. 100 of B. M. Act.

**Sub-section (1):**—refusal or failure to furnish returns within a week of the receipt of the requisition under sec. 102 is made punishable under this section.

**Sub-section (2):**—Under sec. 102 the Commissioners themselves or any person authorized by them in writing on this behalf can enter, inspect and measure any holding for the purpose of verifying the returns filed by the owners or occupiers and this section penalises any obstruction or resistance to their entry.

The prosecution will have to be sanctioned under sec. 875.

**Daily fine:**—the mere refusal or failure to comply with requisitions under sec. 102, 174 (1), 186, 197, or 202 (1) constitutes an offence and there can be a conviction for that simple reason irrespective of any *mens rea*.

For an act or omission made punishable by this Act, i.e., for breach of any statutory duty or obligation no *mens rea* is necessary.

A large body of municipal law has been framed in such terms as to make an act criminal without any *mens rea*. By-laws which impose regulations in the interest of the health or convenience of the public are generally so conceived, and the mere breach of them is sufficient to constitute an offence. Maxwell on statutes, p. 185 (sixth edition).

**Continuing offence:—**“ The failure to comply with the requisition within the period defined is one offence and the continued default is a separate offence. It is illegal for a Magistrate when convicting a person of the primary offence, to impose a fine in anticipation for every day during which the offence may be continued after the conviction, for the imposing of a daily fine prospectively is illegal, inasmuch as it is an adjudication in respect of an offence which has not been committed when such order is passed.” J. Pargiter's B. M. Act, p. 224.

The accused was convicted by the Justice of the Peace for keeping a warehouse for jute without a licence and was fined Rs. 300 and ordered to pay a daily fine of Rs. 25. The case was brought before the High Court and it was contended that the second fine was one for an offence which had not been committed, Justice Norman held that it was an adjudication in respect of an offence which had not been committed. In this case their Lordships further held that as the conviction was one by the Justices of the Peace regulated by the English law which “ could not be amended,” and as part of the conviction was bad the whole conviction in the case was set aside. In the matter of Sagor Dutt, 1 B.L.R. (Or. Cr.) 41=18 W. R. Cr. 44 footnote and see also the Chairman of the Municipal Commissioners for the suburbs of Calcutta *vs.* Aneesuddeen Meah, 20 W.R. 64 quoted below.

So also in the case of W. N. Love, where the petitioner had been sentenced to pay a daily fine of Rs. 2 till he complied with the bye-law the High Court remitted the daily fine as illegal but did not set aside the entire conviction. In re W. N. Love, 18 W. R. 44.

Where a daily fine for every day during which a nuisance continued unabated was inflicted the High Court set aside the order inflicting the prospective fine. In this case their Lordships pointed out that they had jurisdiction to set aside the illegal portion of the order the conviction not being under the English law which “ could not be amended.” The Chairman of the Municipal Commissioners for the Suburbs of Calcutta *vs.* Aneesuddeen Meah and others, 20 W. R. 64 (Cr.). See also in this connection Kristodhone Dutt *vs.* Chairman of Calcutta, 25 W.R. Cr. 6 where there was an order for



daily fine in case the accused did not remove an obstruction within a certain time.

An order for payment of a daily fine is illegal as it is an adjudication in respect of an offence which has not been committed when such order is passed. *Ram Krishna Biswas vrs. Mohendra Nath Mazumdar*, 27 Cal. 565. See also *Harendra Nath Mazumdar vrs. Chairman, Birnagar Municipality*, 1 C.L.J. 51 and *Nilmoni Ghatak vrs. King-Emperor*, 37 Cal. 671, which are to the same effect.

The law has been similarly laid down in Madras in *Q.E. vrs. Veeramal*, 16 Mad. 280 and in Allahabad in *Q.E. vrs. Wazir Ahmed*, 24 All 309 and in Bombay in *In re Limbaji Tulsiram*, 22 Bom. 766 in which it was explained that there must be a separate prosecution for the continued offence.

**Procedure for infliction of daily fine:**—A magistrate having convicted certain persons and fined them under sec. 471 of the City of Bombay Municipal Act (Bom. Act III of 1888) proceeded in the same order purporting to act under the provisions of sec. 472 to fine them so much per day in case they continued the offence, held that the latter order was illegal under sec. 472 of the Act. The section requires a separate prosecution for a distinct offence, a prosecution in which a charge must be laid for a specific contravention for a specific number of days and for which charge, if proved, the Magistrate is to impose a daily fine of an amount which is left to his discretion to determine. *In re Limbaji Tulsiram*, 22 Bom. 766 and see also *Nani Lal Sett vrs. The Corporation of Calcutta*, 7 C.W.N. 853.

If the offence continues a fresh prosecution ought to be instituted. The correctness of the first conviction cannot be challenged in the second or subsequent trial. *Sital Prasad vrs. Municipal Board of Cawnpur*, 36 All 430.

Reviewing all the cases above cited the Patna High Court has held that a Court should not impose a daily fine in anticipation of commission of an offence in future, *e.g.*, the continuance of an encroachment, obstruction or nuisance contemplated under sec. 2 (clause 2) of the Patna District Board Bye-laws. *Pancham Sao vrs. K. E.* 6 P.L.T. 204

**Limitation:**—The offence provided for in the section is the failure to comply with the requisition and if of a continuous nature. Limitation against a prosecution for such offence therefore begins to run from the time when the failure to comply with a requisition is first brought to the notice of the Chairman and must be brought within six months of it. *Lutti Singh vrs. The Behar Municipality through their overseer A. Karim*, 1 C.W.N. 492.

Determination of rate of tax on holdings. **104. Subject to the provisions of section 84, the Commissioners, at a meeting to be held before the**

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close of the year next preceding the year to which the tax will apply, shall determine the percentage on the valuation of holdings at which the tax shall be levied, and the percentage so fixed shall remain in force until the order of the Commissioners determining such percentage shall be rescinded, and until the Commissioners at a meeting shall determine some other percentage on the valuation of holdings at which the tax will be levied from the beginning of the next year:

Provided that, when this Act is first extended to any place, the first tax may be levied from the beginning of the quarter next after that in which the percentage has been fixed by the Commissioners at a meeting;

Provided further that, where the amount standing to the credit of the Commissioners in the municipal fund in any municipality is in the opinion of the Local Government insufficient to meet the liabilities of the Commissioners, no decrease shall be made in the rate of any tax levied by them without the sanction of the Local Government.

## NOTES.

The section corresponds to sec. 102 of the B. M. Act.

No budget can be passed until the percentage has been determined. The percentage on the valuation of the holdings at which the tax is to be levied shall have to be determined by the Commissioners at a meeting before the preparation of the budget estimates as on this the probable receipts of the municipality will have to be calculated. The percentage so fixed will continue until it is rescinded or changed by the Commissioners at a meeting. Until a tax or rate is fixed under the provisions of this Act the old taxes, rates, etc., will continue. See sec. 393 and notes thereto post.

The reasonable interpretation to be put on sec. 102 of B. M. Act is that the rate of percentage fixed continues unchanged and is to be considered as the rate for the year until altered. Sec. 102 provides that once a percentage on the valuation of the holdings at which the rate shall be levied has been fixed it shall remain in force until rescinded or until the Commissioners at a meeting determine some other percentage at which the rate will be levied from the next year. Reading the Act as a whole, it is not required that whenever a fresh valuation is made the Commissioners must hold a meeting to fix the percentage. It is open to them by not holding any meeting to levy at the old rate of percentage on the new valuation. *Bhuban Mohan Basak vrs. The Chairman of Dacca Municipality*, 30 C.W.N. 405 = 94 I.C. 231 = 1926 Cal. 607 (A.I.R.)

**Second proviso:—**“ It is most necessary that when a municipality is indebted no reduction in taxation should be allowed except in special circumstances.” Notes on Clauses, p. 54.

In the case of an indebted municipality whose finances are low no decrease in the rate of tax can be made by the Commissioners without the sanction of the Local Government.

**105.** As soon as possible after the percentage at which the tax is to be levied for the next year has been determined under the last preceding section, the Commissioners shall cause to be prepared an assessment list, which shall contain the following particulars and any others which the Commissioners may think proper to include:—

- (a) the name of the road in which the holding is situated;
- (b) the number of the holding on the register;
- (c) a description of the holding;
- (d) the annual value of the holding;
- (e) the name of the owner and occupier;
- (f) the amount of tax payable for the year;
- (g) the amount of quarterly instalment; and
- (h) if the holding is exempted from assessment, a note to that effect.

#### NOTES.

The section corresponds to sec. 108 of B. M. Act.

The list will be prepared by the Assessment department of the municipality and when the municipality is large, it may be divided into circles. The Commissioners can also appoint assessors for the purpose. See secs. 87, 113 and 114. A Demand Register is prescribed in the Municipal Account Rules (See Appendix) and it is the principal record of the Assessment Department.

The rating will not be invalid for any mistake in the name, residence, place of business or occupation of the person or in the description of the property, thing or circumstance or by reason of any clerical error or defect of form in the assessment list or any other list, notice, bill, etc. See sec. 380 and notes thereto.

The section gives the various headings of the columns which have to be filled up in the preparation of the assessment list. The Commissioners may also include other particulars in the list which they may consider necessary.

**Clause (g):**—Under this clause the name of the occupier and owner have both to be included in the list; but in the list prepared under the B. M. Act the name of the owner alone used to be entered. The name of the owner and occupier are now both entered for the purposes of secs. 88 & 100.

**Clause (h):**—Even if a holding is exempted from assessment it should be included in the assessment list in order to keep the municipal record complete.

**Revision and dura- 106. (1) New valuation and assessment lists shall  
ion of list. ordinarily be prepared, in the same manner as the  
original lists, once in every five years.**

**(2) Subject to any alteration or amendment made under section 107 and to the result of any application under section 116, every valuation and assessment entered in a valuation or assessment list shall be valid from the date on which the list takes effect in the municipality and until the first day of the April next following the completion of a new list.**

#### NOTES.

Sub-section (1) is based on sec. 145 of U. P. Act II of 1916 and sec. 97 of B. M. Act.

“ Section 97 of the Bengal Act seems to leave it open to the Commissioners to delay making a new valuation on the expiry of five years and thus to prolong the duration of the valuation indefinitely. This clause now requires a new assessment every five years.” Notes on Clauses, p. 55.

A revaluation of all holdings should ordinarily be made every five years. The valuation and assessment entered in an assessment list remains in force from the time the assessment is based on such list till the beginning of the next financial year after the completion of a new and revised list.

The reasonable interpretation to be put on sec. 102 of B. M. Act is that the rate of percentage fixed continues unchanged and is to be considered as the rate for the year until altered. Sec. 102 provides that once a percentage on the valuation of the holdings at which the rate shall be levied has been fixed it shall remain in force until rescinded or until the Commissioners at a meeting determine some other percentage at which the rate will be levied from the next year. Reading the Act as a whole, it is not required that whenever a fresh valuation is made the Commissioners must hold a meeting to fix the percentage. It is open to them by not holding any meeting to levy at the old rate of percentage on the new valuation. *Bhuban Mohan Basak vrs. The Chairman of Dacca Municipality*, 80 C.W.N. 405=94, I. C. 231=1926, Cal. 607 (A.I.R.)

Amendment  
alteration of list

and

**107. (1) The Commissioners may from time to time alter or amend the assessment list in any of the following ways:—**

(a) by entering therein the name of any person or any property which ought to have been entered, or any property which has become liable to taxation after the publication of the assessment list under section 115;

(b) by substituting therein for the name of the owner or occupier of any holding the name of any other person who has succeeded by transfer or otherwise to the ownership or occupation of the holding;

(c) by enhancing the valuation of, or assessment on, any holding which has been incorrectly valued or assessed by reason of fraud, misrepresentation or mistake;

(d) by re-valuing or re-assessing any holding the value of which has been increased by additions or alterations to buildings;

(e) where the percentage on the annual value at which any tax is to be levied has been altered by the Commissioners under the provisions of section 104, by making a corresponding alteration in the amount of tax payable in each case;

(f) by reducing, upon the application of the owner or occupier, the valuation of any holding which has been wholly or partly demolished or destroyed; or the value of which has been diminished from any cause.

(g) by correcting any clerical or arithmetical error.

(2) The Commissioners shall give at least one month's notice to any person interested, of any alteration which they propose to make under clauses (a), (b), (c) or (d) of sub-section (1), and of the date on which the alteration will be made.

(3) The provisions of sections 116 to 119 applicable to objections shall, so far as may be, apply to any objection made in pursuance of a notice issued under sub-section (2) and to any application made under clause (f) of sub-section (1).

(4) Every alteration made under sub-section (1) shall be signed by the Chairman and, subject to the result of an application under section 116, shall take effect from the date on which the next instalment falls due, but the Commissioners by such alteration shall not be deemed to have made a new or revised assessment list.

## NOTES.

Sub-section (1) (a), (c) and (d) are based on sec. 108 of B. M. Act.

Sub-section (1) (b) is based on section 109 of B. M. Act.

Sub-section (1) (b) is based on sec. 107 of B. M. Act.

Sub-section (1) (e) and sub-section (4) are based on secs. 97A and 108 of B. M. Act.

Sub-sections (2) & (3) are new and not to be found in the B. M. Act.

“ This clause brings together the provisions of sections 97A, 107, 108, 109 of the Bengal Act in a more clear and concise form. Provision is made that a rate-payer shall have at least one month's notice of any change intended to be made in the assessment list in which he is interested.” Notes on Clauses, p. 56.

This section prescribes the manner in which an assessment list can be amended or revised within five years; and from time to time the alterations can be made on the grounds mentioned in the section and on no others. The various ways in which the assessment list can be corrected are (a) by entering the name of the person or property which ought to have been entered in it or which has become liable to taxation subsequently (b) by substituting the names of the successor by transfer or otherwise, (c) by enhancing the valuation or assessment of any holding which had been either through fraud, misrepresentation, etc., incorrectly valued, (d) by re-valuing or re-assessing any holding the value of which have been increased by additions or alterations to buildings already standing thereon, (e) by altering the amount of tax payable, by changing the percentage on the valuation at which the tax was levied under sec. 104, (f) by reducing the valuation owing to demolition or destruction of any building on the holding or deterioration in the value of the holding from any cause, (g) by correcting clerical or arithmetical errors.

**Sub-sections (a) (c) & (d):**—When a portion only of a holding, being within the municipal limits was assessed to municipal tax, but later on the Municipal limits having been duly extended the remainder of the holding was during the quinquennium following upon such assessment (with the sanction of the Local Government) assessed with additional tax as a separate holding, held that the entire plot which was held by the assessee under one title constituted one holding and was liable to assessment as such upon the extension of the municipal limits. That the tax fixed with reference to the area formerly within the municipality could not be enhanced during the quinquennium on the ground of the area of the holding having increased by reason of the extension of the municipal limits, neither sec. 97A nor sec. 102 nor sec.

108 B. M. Act being applicable to the case. Chairman of the Municipal Commissioner of Kushtea *vs.* Satish Candra Saha, 28 C.W.N. 611=46, Cal. 784.

Re-assessment in sec. 557 cl. (d) of the Calcutta Municipal Act (a similar section) signifies re-valuation and not re-imposition of rate or tax. Secretary of State *vs.* Belchambers, 88 Cal. 896.

**Sub-section (2):**—Notices of any proposed alterations under clauses (a) to (d) of sub-section (1) and of the date on which the alterations will be made are required to be given to persons affected by the changes. At least one month's notice will have to be given in cases coming under clauses (a) to (d) but not in cases coming under clauses (e) to (g); under clause (e) when Commissioners change the percentage under sec. 104 all rate-payers have notice and no special notice under this section is required, under clause (f) the reduction is made on the application of the owner or occupier and notices are unnecessary, so also under clause (g) when the corrections are purely clerical or arithmetical no notices are necessary.

**Sub-section (3):**—after receipt of notice under sub-section (2) the persons interested can file objections and the provisions of secs. 116 to 119 become applicable to such objections and they have to be disposed of legally.

**Sub-section (4):**—alterations made under sub-section (1) shall be signed by the Chairman and shall take effect from the date on which the next instalment of tax becomes due. The making of such alterations or amendments will not have the effect of making a new or revised list.

After an assessment was once made the Commissioners had no power during the quinquennius during which it was in force to revise the assessment except by changing the percentage on the annual value on which the tax was based. See Chairman of the Municipal Commissioners of Kustea *vs.* Satish Chandra Saha, 28, C.W.N. 611=46, Cal. 784. This was the law under the Bengal Act. To meet such an argument sub-section (4) lays down that the alteration or amendment of an assessment list on any of the grounds mentioned in sub-section (1) will not have the effect of making a new and revised list and the re-assessment of any holding within five years on such an altered assessment list will not be *ultra vires*.

Notice to chairman of transfer of title to holding.

**108. (1)** Whenever the title to any holding is transferred, both the transferor and the transferee shall, within three months after the execution of the instrument of transfer, or, if no such instrument is executed, within three months after the transfer is effected, give notice in writing of such transfer to the Chairman.

(2) In the event of the death of the person in whom such title vests, the person to whom, as heir or otherwise, the title of the deceased is transferred, by descent or devise, shall, within one year from the death of the deceased, give notice in writing of such transfer to the Chairman.

(3) Whoever contravenes the provisions of sub-section (1) or (2) shall be liable to a fine not exceeding ten rupees.

### NOTES.

There is no corresponding section in the B. M. Act.

This clause was not in the original Municipal Bill. It was introduced by the Select Committee following the Calcutta and Bombay Municipal Acts. " Clause 108 has been inserted following the Calcutta and Bombay Municipal Acts to provide that notice of transfers shall be given to the Commissioners." Report of the Select Committee, para. 43.

**Sub-section (1):**—This section imposes a duty on both the transferor and transferee of giving notice of transfer of title to holdings to the Chairman. If the transfer is by an instrument then the notice is to be given within three months of the execution of the instrument; if there is no document then within three months of the transfer the notice is to be given.

**Sub-section (2):**—In the case of the death of the owner the heir or legatee who becomes entitled to the holding has to give the required notice of the transfer of title to the Chairman within one year.

**Sub-section (3):**—penalises the failure to give the required notice. The prosecution will be under sec. 375. There was no such provision in the B. M. Act, the matter was left to the rate-payers; the municipal records were in most cases not up to date and so suits against dead persons were not uncommon.

**109. (1)** If any house belongs to one owner and the land on which it stands and any adjacent land which is usually occupied therewith belongs to another, the Commissioners may value such house and land together, and may impose thereon one consolidated tax.

(2) The total amount of the tax shall be payable by the owner of the house, who shall thereafter be entitled to deduct from the rent which he pays for the land such proportion of the tax so paid by him as is equal to the proportion which such rent bears to the annual value of the holding.

Power to assess upon house consolidated tax for house and land on which it stands.



## NOTES.

The section corresponds to sec. 104 of B. M. Act.

The Commissioners have nothing to do under this Act with the apportionment of the tax between the owners of the house and land; but under the Bengal Act the Commissioners on the application of either party could make an award declaring the amount payable by each and this was final (sec. 104 B. M. Act). The Civil Courts can adjudicate as to the apportionment between parties litigating between themselves.

**110.** Whenever, from the circumstances of the case, the levy of a tax on any holding in the municipality would be productive of excessive hardship to the person liable to pay the same, the Commissioners at a meeting may reduce the amount payable on account of such holding, or may remit the same:

Powers of commissioners in cases of excessive hardship.

**Provided that such reduction or remission shall not, unless renewed by the Commissioners at a meeting, have effect for more than one year.**

## NOTES.

The section corresponds to sec. 106 of B. M. Act.

The essential words in the section and the main point to be considered are whether the levy of tax would be "productive of excessive hardship" to the person concerned and if it is so the Commissioners at a meeting may reduce or remit the tax levied on the holding. The exemption may be made at any time; and the exception must be recorded in the assessment list. The petition for exemption is exempt from court fees. See sec. 19 of the Court Fees Act.

The Commissioners at a meeting can only reduce or remit the holding tax. Under sec. 98 the Commissioners may grant remission of the personal tax and the Chairman who represent them can do so himself without calling any meeting.

**Proviso:**—"The proviso seems necessary, as it is not intended that reductions or remissions should be ordinarily more than temporary." Notes on Clauses, p. 57.

The reduction or remission granted under this section shall have effect for only a year, but it may be renewed again by the Commissioners at a meeting after that period.

sec. 111.

Remission or refund on account of vacant holdings.

**111. (1)** When any holding has been unoccupied and unproductive of rent for sixty or more consecutive days during any year, and a written notice of the fact has been given to the Commissioners, they shall remit, and, if the tax has been paid, shall refund three-fourths of so much of the tax of that year as may be proportionate to the number of days the said holding has remained so unoccupied.

**(2)** The notice referred to in sub-section (1) shall be given during the period in which the holding is unoccupied and unproductive of rent, and the amount of tax to be remitted or refunded shall be calculated from the date of the delivery of such notice.

**(3)** No refund of any amount under sub-section (1) shall be made unless the application is made within six months from the date of payment.

**(4)** The burden of proving the facts entitling any person to claim relief under this section shall be upon him.

**(5)** For the purposes of this section neither the presence of a caretaker, nor the mere retention in an otherwise unoccupied dwelling-house of the furniture habitually used in it, shall constitute occupation of the house.

**(6)** For the purposes of this section a house shall be deemed productive of rent if let to a tenant who has a continuing right of occupation thereof, whether it is actually occupied by such tenant or not.

#### NOTES.

The section corresponds to sec. 110 of B. M. Act and sec. 72 of the Punjab Municipal Act (Act III of 1911).

"The subject of vacant holdings has given rise to difficulty, as the present Act does not attempt to define vacancy. The provisions of this clause are based on the Punjab Municipal Act, 1911, section 72."

"Whereas under the Bengal Act a sixty days vacancy entitles the rate payer to a remission of one-half of the tax due, it is now proposed that the remission should be increased to three-fourths, having in view the fact that the clause will cover the payment not only of the tax on holdings, but also three other taxes assessed on the annual value of holdings. Power is given to Commissioners to remit such portion of the taxes as to them may seem equitable in cases when part of a holding consisting of tenements is vacant

or when part of a holding is burnt or destroyed. It is stated that the mere presence of a care-taker or of furniture will not constitute occupation.

To bring a holding under the operation of this clause, vacancy alone will not be sufficient, it will have to be unproductive of rent as well, the mere absence from a house of a tenant who is continuing to pay will not constitute vacancy." Notes on Clauses, p. 58.

**Sub-sec. (1):**—To exempt a holding under this section it must be shewn that it has remained vacant and unproductive of rent for sixty or more consecutive days during any year.

Tax in this section means all taxes based on the annual value of holdings, viz., holding tax, water, lighting and latrine tax.

**Refund three-fourths:**—under sec. 110 of B. M. Act one-half of the rate (holding tax) used to be refunded but under this section three-fourths of the taxes have to be refunded.

**Sub-sec. (2):**—Notice of the vacancy of the holding must be given during the period it remains unoccupied and unproductive of rent and the amount of tax to be remitted shall be calculated from the date of notice.

**Sub-sec. (3):**—There must be another application for refund and this must be filed within six months of the date of payment of the tax.

**Sub-secs. (5) & (6):**—The mere presence of a caretaker on the holding or the keeping of furnitures in the holding is not occupation of the holding but a holding though actually unoccupied but for which rent is being paid by the absentee tenant and who can occupy it at any time cannot be called to be unproductive of rent and so cannot be allowed the refund given to vacant holdings.

**Vacancy of arable lands:**—In the case of *Mahadab Aon vrs. Chairman Howrah Municipality*, their Lordships, Justice Mukherji and Carnduff observed as follows "we are not prepared to concede that sec. 110 is inapplicable to culturable plot of land but should rather hesitate to hold that the benefit of the provision could not be claimed if a piece of arable land assessed with the tax in a municipality were to lie uncultivated, tenantless and unproductive of rent for the statutory period" 14, C.W.N. 857, at page 859.

Penalty for failure  
to give notice of re-occu-  
pation

**112.** Whoever, being the owner, or, in the case of the latrine tax, the occupier, of any holding for which a remission or refund of the rate has been made under the last preceding section, fails to give notice of the re-occupation of such holding within ten days of such re-occupation, shall

be liable to a fine not exceeding three times the amount of tax payable quarterly on such holding.

NOTES.

The section correspond to sec. 111 of B. M. Act.

Failure to give notice of re-occupation within ten days of it by the owner or occupier is made punishable under this section.

The prosecution will be according to sec. 375.

(c) GENERAL PROVISIONS RELATING TO ASSESSMENT.

Appointment of assessor of municipal taxes. **113. (1)** If at any time it appears to the Local Government that the assessment made in any municipality by the Commissioners, or by an assessor appointed under section 37, is insufficient or inequitable, the Local Government may, by an order in writing, require the Commissioners of such municipality to revise and amend such assessment, or to show cause against such order, within a time to be specified therein.

(2) If the Commissioners fail to comply with such order, or if, in the opinion of the Local Government, the revised and amended assessment is insufficient or inequitable, the Local Government may, by an order in writing, require the Commissioners to appoint an assessor of municipal taxes for such municipality, within a time and for a period to be specified in such order.

(3) Such order shall fix the pay of the assessor and the cost of his establishment, and such pay and cost shall be paid monthly by the Commissioners.

(4) An assessment made by an assessor appointed under subsection (2) shall, when completed, rescind and take the place of the assessment which was held to be insufficient or inequitable.

NOTES.

The section corresponds to sec. 111A of B. M. Act.

"The word "and if the Commissioners have not appointed an assessor under section 46" in section 111A of the Bengal Act were, it appears inserted in that section without any adequate reason. The mere appointment of an assessor under sec. 46, however incompetent he may be, prevents the Local Government from insisting on a revision of the assessment, with serious effects on the income of the Municipality. The Local Government will have power to make rules as to the qualifications of Assessors to be employed, and it is hoped that in course of time a number of expert assessors

will be available to help the Commissioners in making a fair assessment." Notes on Clauses, p. 59.

Under the Bengal Act sec. 111A if the assessment was made by the Commissioners the Local Government could insist on a re-revision of it if it appeared to it insufficient or inequitable but if the assessment was made by an assessor appointed under sec. 46 of the B. M. Act then the Local Government could not insist on a revision of it, however insufficient or inequitable it seemed. The present section enables the Local Government to insist on a revision of an assessment whenever it seems insufficient or inequitable, whether it was made by the Commissioners or by an assessor appointed under section 37; further the Local Government has been empowered under section 114 to frame rules as to the qualifications and the manner in which an assessor has to frame an assessment.

"The section provides a remedy with the minimum of inconvenience and with greatest regard for the dignity of the Commissioners and is intended only for cases of unquestionable necessity." J. Pargiter's B. M. Act, page 142.

When an assessor makes an assessment and any person is dissatisfied with it, the latter may apply to the Commissioners to review the amount of assessment, who have full powers to review it; the assessor will have notice of every such application and he can explain to the Commissioners as to how he arrived at the assessment. See sec. 116(2).

The Act provides only incidentally for the appointment of a paid assessor and makes no provision whatever as to the method or means of assessment. It is wholly immaterial what machinery is used for arriving at the valuation; all that is required is that there should be an assessment ready for publication and open to review under sec. 112 to 114. Whether the paid assessor was or was not legally qualified in making the assessment, the validity of the determination of the Commissioners under section 114 of the Act could not be impeached. *Chairman of Chittagong Municipality vs. Jogesh Chandra Rai*, 37 Cal. 44. See also the unreported decision of The Chairman of the Chittagong Municipality *vs. Kamalnath Sen* and others quoted in 37 Cal. p. 47.

**114. An assessor appointed by the Commissioners, whether under sub-section (2) of section 113 or otherwise, shall have such qualifications, and shall frame the assessment in such manner, as may be prescribed, and shall exercise all the powers of assessment vested by this Act in the Commissioners.**

Qualifications and powers of assessors and manner of assessment.

## NOTES.

The section is new and there is no corresponding section in the B. M. Act. Compare Sec. 111A of B. M. Act.

Rules have to be framed under this section as to the qualifications of the assessors and as to the manner in which they are to frame the assessment. The rules have to be framed by the Local Government. An assessor cannot delegate his powers of entering, or inspecting a holding to any other person but he has to do it himself under sec. 102. Besides this the assessor has all the powers of the Commissioners in regard to making an assessment.

**Prescribed:**—defined in sec. 3 (22). See *ante*.

Publication of notice of assessment.

**115. (1)** When the assessment list mentioned in section 89 or section 105 has been prepared or revised, the Chairman shall sign the same, and shall give public notice, by beat of drum and by placards posted up in conspicuous places throughout the municipality, of the place where the list may be inspected.

**(2)** The Chairman shall also, in all cases in which any property is for the first time assessed or the assessment is increased, give notice thereof to the owner or occupier of the property if known.

## NOTES.

Sub-section (1) corresponds to sec. 112 of B. M. Act and sub-section (2) is based on sec. 148 of U. P. Act (Act II of 1916).

"Ample provision is here made to ensure that the rate-payers shall have full notice of the amounts for which they are assessed." Notes on Clauses, p. 60.

The form of notices under the section are prescribed by the Local Government Rules. See sec. 163.

Application for review.

**116. (1)** Any person who is dissatisfied, with the amount assessed upon him or with the valuation or assessment of any holding, or who disputes his occupation of any holding, or his liability to be assessed, may apply to the Commissioners to review the amount of assessment or valuation, or to exempt him from the assessment or tax.

**(2)** When an assessor has been appointed, notice of every such application shall be given by the Commissioners to the

## NOTES.

The section corresponds to sec. 113 of B. M. Act.

This section applies to persons who are dissatisfied with the amounts assessed upon them or the valuation or assessments made upon their holdings or who dispute the occupation of any holdings or who being the occupier disputes his liability to be assessed and such persons can file applications to review the amount of assessment or valuation or exempt them from the assessment.

The section seems to apply more especially to persons who are dissatisfied with the assessments yet it does not exclude persons who pray for exemption or reduction on the ground of poverty (secs. 93 and 114) or on the ground of altered circumstances [sec. 94 and 107 (1) (f)]; though such persons however hardly contest the correctness of what has been done, but pray for special relief on special grounds. This section provides for review in three cases, (1) by a person dissatisfied with the amount assessed upon him, (2) by a person who disputes his occupation of any holding, and (3) by a person who being the occupier of a holding disputes his liability to be assessed; the words "being the occupier of a holding" must be read in the third clause otherwise the second clause becomes redundant and unnecessary.

The word "liability" in the section means liability apart from the question of occupation and must be taken to refer to the liability to assessment or rating of a person who is the occupier of a holding. *Dwarka Nath Butti vrs. Addya Sundari Mittra*. 21 Cal. 319.

If an application under section 113, disputing liability to assessment made according to law is not disposed of in the manner provided by law, all subsequent proceedings with regard to assessment and realisation of taxes are *ultra vires*. The Chairman of the Tikari Municipality *vrs.* Nawbab Alam Ara Begum. 7 P. L. T. 804.

Where the Municipality erroneously assesses the owner with the water and privy tax where they ought to assess the occupier and *vice versa*, the aggrieved person has his remedy by application to the Commissioners under sec. 113 of the Act, and he is not entitled to invoke the assistance of the Civil Courts until he has exhausted his remedies which the Act provides. *Bhuban Mohan Basak vrs. The Chairman of the Municipal Commissioners of Dacca* 80 C.W.N. 405=94 I. C. 281=1926 Cal. 607 (A. I. R.)

**Application for review:**—a form has been prescribed for these applications in the Municipal Account Rules. See Appendix. The time within

which the application must be made is fixed by sec. 118. Such applications are exempt from court fees by sec. 19 (xxi) of the Court Fees Act VII of 1870.

**Valuation:**—The word “ valuation ” in the corresponding section of the Calcutta Municipal Act means not “ the amount of the valuation ” only but also the process or act of valuation. Corporation of Calcutta *vs.* Bhupati Roy Choudhury, 26 Cal. 74. The word seems to have the same meaning in this section.

**Sub-sec. (2):**—Notice of every application under the section must be given to the assessor in order to enable him to explain to the Commissioners as to how he has arrived at the assessment and to defend it. This clause gives full effect to secs. 113 and 114. As to what would be the effect of not giving notice under the section there are as yet no authorities on the point, but the use of the word “ shall ” implies that the giving of notice is mandatory and non-compliance with it is a serious irregularity but it will not simply for this vitiate the assessment.

**117. (1) Every application presented under the last preceding section shall be heard and determined by a Committee consisting of not less than three Commissioners, provided that no Commissioner shall be a member of the Committee appointed to hear applications from the ward for which he was elected.**

Hearing and determination of applications by Committee

**(2) Such Committee, after taking such evidence and making such inquiry as it may deem necessary, may pass such order as it thinks fit in respect of such application.**

**(3) The decision of the Committee, or of a majority of the members thereof, in such cases shall be final.**

#### NOTES.

The section corresponds to sec. 114 of B. M. Act.

“ It is considered that the constitution of the Committees by whom the assessment is revised under the Bengal Act is capable of improvement. Such Committees are frequently too large and many members attend only when their own wards are concerned. The natural result is a lack of continuity, a want of responsibility and wholly unjustifiable reduction in the assessments. The present clause is intended to afford a remedy for this state of affairs. A Committee composed of the Chairman, a Municipal Commissioner and an officer appointed by the Local Government is likely to have the justice of the application and the interests of the Municipality



equally in view." Notes on Clauses, p. 61 (to the section as it stood in the original Bill).

**Sub-sec. (1)** stood in the Original Bill thus:—"Every application presented under the last preceding section shall be heard and determined by a Committee consisting of the Chairman of the Commissioners, a Municipal Commissioner appointed in that behalf by the Commissioners at a meeting and an officer appointed by the Local Government." The clause was amended on the recommendations of the Select Committee. "We consider that the revision of the assessment should be done by the Municipal Commissioners themselves and not with the aid of any outside authority but we are of opinion that no Commissioner should dispose of objections coming from the ward which he represents." Report of the Select Committee, p. 46.

This section deals with the constitution of the Committee which is to hear and decide applications for review under sec. 116. The least number which can compose the Committee is three but no ward Commissioner can be a member of the Committee while it decides applications of the tax-payers of his own ward.

The section lays down the minimum number. It is not necessary that the applications should be heard and determined by all the Commissioners appointed as members of the Appeal Committee, *Deb Narayan Dutt vs. Chairman of Baruipur Municipality*, 39 Cal. 141.

**Sub-sec. (2)**:—this section authorises the Commissioners to take evidence, they therefore constitute a Court under section 8 of the Evidence Act while taking and deciding applications under the section and they can administer oaths under sec. 4 of the Oaths Act.

If an application under sec. 118, disputing liability to assessment made according to law is not disposed of in the manner provided by law, all subsequent proceedings with regard to assessment and realisation of taxes are *ultra vires*. A Municipal tax paid under protest that the demand was *ultra vires* is liable to be refunded if the contention is found to be correct. The Chairman of the Tikari Municipality *vs. Nawab Alam Ara Begum*, 7 P.L.T. 804.

**Sub-sec. (3). Final**:—final as between the applicant and the Commissioners no further appeal being allowed to the entire body of Commissioners or to any other authority. Reading this section along with sec. 119 it is clear that questions other than those involving merely the amount of assessment or rating are cognisable by the Civil Courts. See notes to sec. 119.

It is wholly immaterial as to what machinery is used for arriving at the valuation, all that is required is that there should be an assessment ready

for publication and open to review under secs. 112 to 114 and when such an assessment has once been confirmed by the Appeal Committee under this section, its validity cannot be impeached. Chairman of Chittagong Municipality *vs.* Jogesh Chandra Rai, 37 Cal. 44.

The remedy provided by this section is sometimes loosely spoken of as an "appeal." It is really a review of the valuation or assessment of what had already been made by the Commissioners. The Committee appointed under the section hear and decide the applications for review and their decisions are final. No power is given by the Act to the Committee appointed under this section or to the general body of the Commissioners to review their decision passed on "review" under this section.

Limitation of time  
for application for  
review.

**118.** Unless good cause is shewn to the satisfaction of such Committee for extending the time allowed, and save as is otherwise expressly provided in this Act, no such application shall be received after the expiry of one month after the public notice referred to in sub-section (1) of section 115 or after the service of the special notice referred to in sub-section (2) of the said section, whichever is later.

#### NOTES.

"The Bengal Act allows one month for the filing of applications for review dating from the publication of notice of the assessment or valuation, or from the service of the notice of demand whichever period last expires. While bills must be served within six months from the commencement of the quarter in which the tax becomes due the notice of demand may be served at any subsequent period subject to the law of limitation. Therefore in extreme cases, a period of 6 months plus three years and 15 days might elapse before an appeal would be absolutely barred if bills and notices of demand were not served till the last moment allowed by law. Cases have happened in which great delays have thus occurred, and it appears evident that the opportunities for abuse of the privilege of extending the time during which applications against assessment can be filed should be curtailed. This can best be done by omitting that part of section 115 which relates to the notice of demand. At the same time it is proposed that the period should be extended from one month to six weeks and the provision of sub-clause (2) of clause 116 (sec. 115) will ensure that the rate-payers will have ample notice of the amount assessed." Notes on Clauses, p. 62.

This section prescribes the period of limitation for filing review applications. None can be made after a month except on two grounds, (1) that

good cause for the delay is shown to the satisfaction of the Committee or (2) that it is otherwise expressly provided in the Act. What is good cause will be within the Committee's discretion; the second ground apparently refers to applications under secs. 93 to 95, and secs. 107 and 110.

The period begins to run from (1) the date of the public notice under sec. 115 (1), or (2) the date of service of the special notice under sec. 115 (2) whichever is later.

Assessment to be questioned only under Act.

**119. No objection shall be taken to any assessment or valuation in any other manner than in this Act is provided.**

#### NOTES.

This section corresponds to sec. 116 of the B. M. Act.

This section is taken from the section of the B. M. Act as amended by sec. 46 of Bengal Act IV of 1894.

"The section was amended by the amending Act (Bengal Act IV of 1894) in order to make it clear that in questions regarding the amount of the assessment or rating the decision of the Commissioners (Committee under this Act) should be final, but that in all other questions persons aggrieved could have their ordinary remedy in the Courts; it is therefore in the first case mentioned in sec. 116 that the decision of the Commissioners is final." J. Pargiter's B. M. Act, page 145.

**When a civil suit will lie:—**The result deduced from all the reported decisions is that "when the person assessed disputes simply the amount of the assessment or rating, the objection can be taken only in the manner provided in this Act and the decision of the Commissioners (Committee under sec. 117 of this Act) under sec. 114 B. M. Act become final under that section and cannot by virtue of this section (sec. 116 of B. M. Act and sec. 119 of this Act) be questioned otherwise. But if he in any way disputes his liability, as by contending that the tax has no legal existence, or that it has not been imposed on him according to the provisions of the law, this section does not bar him and he can institute a suit in the Civil Court to try the question and the result of such a suit may be to alter the assessment or rating." J. Pargiter's B. M. Act, page 146.

If the plaintiffs in the civil suit questions the principle upon which the assessment was made, not so much as to the amount of the tax imposed; if he says that in making the assessment the Municipal Commissioners have proceeded upon a certain basis which could not under the law form the

right basis of such assessment then the suit is maintainable. *Kameshwar Prasad vs. The Chairman of Bhabua Municipality*, 27 Cal. 849 (857).

Under sec. 116 of B. M. Act the decision of the Objection Committee in matters regarding the amount of assessment is final and the Civil Court has no jurisdiction to interfere in such matters. It can only interfere when the assessment is *ultra vires*. *Chairman, Municipal Board, Chapra vs. Basudeo Narayan Singh*, 37 Cal. 374. See also in this connection 38 Bom. 298 cited below.

If the assessment made by the Municipal Commissioners be *ultra vires* there is nothing in the Act to prevent a rate-payer from seeking in a Civil Court a decision that the action on the part of the Municipality was *ultra vires* and that the assessment is not binding upon him. *Nabadip Chandra Pal vs. Purnananda Saha*, 3 C.W.N. 73.

Section 116 does not take away the jurisdiction of the Civil Courts in a case in which it is alleged and established that the assessment the propriety of which is in controversy is open to objection on the ground that it is *ultra vires*; in other words, it is only when the action of the municipality has been exercised in conformity with the powers conferred upon it by the Act, that the Civil Court has no authority to interfere. A Corporation which is invested with authority to assess taxes, is really invested with a quasi-judicial powers, and although its action when taken in conformity with the provisions of the law, which created the authority, may not be liable to be challenged in the Civil Court, it does not enjoy a similar immunity when that action can be challenged on the ground that it has been taken either in excess of or in contravention of the power conferred upon it by the Statute. *Chairman of Giridih Municipality vs. Sirish Chandra Mozumdar*, 35 Cal. 859.

If the question relates to the amount of assessment according to the circumstances and property within the municipality then the decision of the Commissioners under sec. 114 is final and the Civil Court has no power to re-open the question of assessment. Where, however it was found that the assessment was made not only with respect to the holding, the defendant had within the municipality, but also in respect of circumstances and property outside the jurisdiction of the municipality the assessment was *ultra vires*. *Chairman of the Rajpur Municipality vs. Nagendra Nath Bagchi*, 23 C.W.N. 475=50 I.C. 894.

Though a suit will not lie simply to reduce the amount of assessment yet if the principle of assessment is disputed as for instance if the person assessed alleges that in making the assessment the Commissioners have proceeded upon a basis which could not in law form a right basis of such assessment a suit will lie. So where the Commissioners had assessed a

person upon his circumstances and property not only within the limits of the municipality, but also outside those limits and had thus over-assessed him the assessment was set aside as *ultra vires* and illegal. See *Kameshwar Prasad vs. The Chairman, Bhabua Municipality*, 27 Cal. 849 and 23 C.W.N. 475, cited above.

Where a municipality purporting to act under sec. 98 (B. M. Act) split up one holding with one assessment into two holdings with two assessments, thereby increasing the amount, in a year after the regular assessment, it was held that sec. 98 did not authorise the municipality to do this and they should have waited for the next triennial assessment, when it would have been open to them to have it done. *Navadip Chandra Pal vs. Purnanda Saha*, 3 C.W.N. 73.

The splitting of a holding held under one title and surrounded by one set of boundaries into two separate holdings and separate valuation and assessment thereof is not justified under the B. M. Act. *Tarapada Mazumdar vs. Satish Chandra Saha*, 46 Cal. 784.

A suit to set aside an order made on an appeal under section 33 of Bengal Act III of 1864 to the Municipal Commissioners against a rate assessment and to reduce the tax levied by them under that Act, on the ground that they have tried the appeal in an improper way and have exceeded their powers and acted contrary to the provisions of the Act, cannot be maintained in the Civil Courts. The decision of the Commissioners in such an appeal is final. *Manessar Das vs. The Collector and Municipal Commissioners of Chapra*, 1 Cal. 409.

A suit brought to set aside an assessment on the ground that the person assessed does not occupy a holding is not barred by the provisions of sec. 116 (B. M. Act), *Dwarka Nath Dutta vs. Addya Sundari Mittra*, 21 Cal. 319.

Where the Municipality estimated the annual letting value of a house belonging to the accused at Rs. 50 and levied a house-tax of Rs. 2-8 the tax payer applied to the Managing Committee for a reduction of the tax but his application was dismissed and he was prosecuted for not paying the tax it was contended for him that the estimate made by the municipality was too high, held that the Magistrate had no power to go behind the estimate of value framed by the Managing Committee under the powers given to it by the rules. He (the Magistrate) ought to have accepted as conclusive the amount found by the Managing Committee to be the letting value of the house and held the legal liability of the accused to pay the tax based on this amount to be proved. The remedy of the accused if he considered his house assessed too highly was to apply to the Managing Committee and no

other mode of redress was open to him. The Municipality of Wai *vs.* Krishnaji Gangadhar, 28 Bom. 446.

In a suit by the plaintiff to recover the excess amount of house tax levied from him the question was referred to the High Court whether the Civil Court can or cannot interfere in the matter of Municipal valuation of the houses at the instance of the party aggrieved and it was held that the Civil Court is bound to accept as conclusive the valuation come to by the only authority in whom the power of making the valuation is placed by law, and it cannot substitute for that valuation one made by itself. The valuation in the first instance is placed in the hands of a Committee and a remedy against over-valuation by the Committee is provided in the shape of an appeal to the general Committee the Civil Court cannot put itself in the place of or over either the Committee or the General Committee and revise the valuation made by them. *Morar vs. Borsad Town Municipality*, 24 Bom. 607.

In another case the plaintiffs impeached the assessment on the ground that the mode of estimating it was illegal and not in accordance with the rules framed by the municipality; but he was not able to make that out and the mode in which the municipality's officers arrived at his valuation did not contravene the rules. It was held that as no breach of the prescribed rules had been committed, then in the absence of any proof of malafides, perversity or manifest error the Civil Courts ought not to interfere with the house valuation made by a municipality for the purpose of taxation. *Kasandas Raghunath Das vs. The Ankleshwar Municipality*, 26 Bom. 294.

Again, where the Poona Cantonement Magistrate had wholly disregarded the basis upon which the rate was to be assessed and in assessing a tax based on the annual value of premises he took the annual income derived from the premises as the basis of calculation. In a suit to recover the amount of tax levied by the Cantonement authorities and paid under protest it was held that the Civil Courts had jurisdiction to entertain a suit to recover the amount paid under protest on the ground that the assessment was illegal. *Secretary of State for India in Council vs. Major J. E. Hughes*, 38 Bom. 298.

A person residing within the limits of a municipality procured business and collected premium for an Insurance Company and forwarded the moneys to the Company at a place outside the municipality; and for this he received only a commission but no office or establishment of the Company was kept; the municipality levied a sum of money on the Company as profession tax

under sec. 47 of the Madras District Municipalities Act 1884 and it was paid under protest. The Company then filed a suit to recover the amount so levied, held that the Company was not doing business within the limits of the municipality and the suit was maintainable. A Company not liable to the tax had been taxed and the provisions of the Act had not been in substance and effect complied with. The municipality was therefore not protected from action by section 262 of the Act. The Municipal Council, Cocanada *vs.* The Standard Life Insurance Co., 24 Mad. 205.

House tax and water tax was levied under the District Municipal Act (Madras Act IV of 1884) section 68 on the school buildings of the Native College, Madura which were exclusively used for charitable purposes and so exempt from taxation but was paid by the managers of the College who sued to recover the amount, held that the tax was illegal and the plaintiffs were entitled to recover. Fischer *vs.* Twigg and others, 21 Mad. 367.

The Municipality at Tuticorn demanded Rs. 50 as profession tax from the South Indian Railway Co., which had already paid profession tax to the Municipality at Negapatam. The Company complied with the demand under protest and sued the municipality for refund held that the Civil Court had jurisdiction to hear and determine the suit and the municipality at Tuticorn had no right to levy the tax on the Railway Company as it had already been paid to the Negapatam Municipality. There can be no doubt that a suit will lie, when the provisions of the Act have not been complied with in substance and effect in regard to the assessment and levy of such tax, and the tax cannot be considered to have legal sanction. Municipal Council of Tuticorn *vs.* South Indian Railway Company, 13 Mad. 78.

Where the machinery for levying a tax is not applied no liability to pay such tax can arise. Section 85 of Madras Act III of 1871 is not a bar to a suit to recover money wrongfully levied as a tax because such so-called tax had no legal existence. G. D. Leman *vs.* V. Damodaraya, 1 Mad. 158.

But if the procedure prescribed for the imposition of the tax has been conformed to by the Commissioners and the tax having thus a legal existence no suit will lie to contest its incidence. Kamayya *vs.* Leman, 2 Mad. 37.

Where the provisions of the Act have not only been substantially complied with, but have been completely ignored the taxes were not legally imposed and a suit for the recovery of the taxes levied was decreed. In this case the notice required by sec. 71 (2) of Madras Act IV of 1884 had not been served on the person at all and the first notice which he got was a notice of demand. Municipal Council, Tanjore *vs.* Umamba Boi Saheb, 23 Mad. 523.

Where notice of a meeting was not properly served on all the Commissioners and notice to all the Commissioners being a material part of the machinery provided by the Act for imposing a legal tax, it was a condition precedent to the validity of that tax. Whether the resolution was sanctioned by the Government or not it was not legal and always retained its inherent defect. The Civil Courts had jurisdiction to decide as to the validity of any fresh tax or impost and section 21 of the Bombay District Municipal Act (Act VI of 1878) did not take away that jurisdiction. *Joshi Kalidas Sevakram vs. The Dakor Town Municipality*, 7 Bom. 399.

**Limitation of suits.** The right to obtain a declaration that the plaintiffs were not liable to assessment under the Act was a recurring right and an action to obtain such a declaration would be maintainable even if brought more than three months after the assessment. *Ambica Charan Mozumdar vs. Satish Chandra Sen*, 2 C.W.N. 689.

A suit for refund of Municipal Tax paid under protest need not be instituted within three months of the cause of action. *The Chairman, Tikari Municipality vs. Nawbab Ali Ara Begum*, 7 P.L.T. 804.

For other cases of suits and the necessity of notice see notes to sec. 377.

### III. RECOVERY OF TAXES.

Office hours for payment of taxes. **120.** By notification to be posted up in their office the Commissioners shall declare at what hours of each day (not being a Sunday or other recognised holiday) the office shall be open for the receipt of money and the transaction of business.

#### NOTES.

This section corresponds to sec. 117 of B. M. Act.

It is not incumbent upon the Commissioners to go from house to house for realising taxes; all payments of taxes has to be made in the office on week days between the hours fixed by the Commissioners. Payments can be also made to officers who go to serve notices of demand.

Tax payable in advance. **121. (1)** The amount due by any person on account of the tax on persons, or of any tax on the annual value of holdings, shall be deemed to be the amount entered in the lists the notice relating to which is published under section 115, unless the amount entered in such lists is subsequently altered by the Commissioners as provided in this Act; in which case the amount to which the assessment or rating is so altered shall be deemed to be the amount due.



(2) Such tax shall be payable in quarterly instalments, and every such instalment shall be deemed to be due on the first day of the quarter in respect of which it is payable.

#### NOTES.

The section corresponds to sec. 118 of B. M. Act.

Lists mean the assessment list finally corrected. In the assessment list prepared under secs. 89 and 105 both the amounts of annual assessments and the amount of quarterly instalments are entered in the appropriate columns. This section makes the taxes payable in quarterly instalments and the quarterly instalments are payable in advance on the 1st day of each quarter.

See in this connection the case of *Golam Rasul vrs. King-Emperor*, 2 P.L.T. 890.

By sec. 880 no assessment list or any other list notice or bill, etc., shall be invalid for a mistake in the name, residence, place of business, etc., or by reason of any mere clerical error or defect of form.

Receipts to be given. **122.** For all sums paid on account of any tax under this Act a receipt stating the amount and the tax on account of which it is paid shall be given, signed by the tax-collector, or by some other officer authorized by the Commissioners to grant such receipts.

#### NOTES.

The section corresponds to sec. 119 of B. M. Act.

This is a general section which applies to any tax under this Act.

A form of receipt (Form H) for the tax on persons, is prescribed by the Account Rules. See Appendix. Receipts for other fees, etc., are prescribed by rules framed by the Local Government and are notified under the respective sections.

A receipt by a municipality acknowledging payment of house-tax exceeding Rs. 20 requires a receipt stamp under the Stamp Act. In re Karachi Municipality, 12 Bom. 103. This applies to the case of all receipts granted under this Act.

Notice of demand to be presented. **123.** (1) Within fourteen days of the first day of the quarter, the Commissioners shall notify by public proclamation, or in such manner as they may consider suitable, the date on which an instalment of the tax becomes due.

sec. 124

If the sum due on account of any tax is not paid within fourteen days from the date on which it became due, the Commissioners shall cause to be served on the person liable to pay the same a notice in the prescribed form:

Provided that—

- (a) no notice shall be served more than six months after any sum has become due; and
- (b) no charge shall be made in respect of the service of such notice.
- (3) Such notice shall be signed by the Chairman or an officer authorized in that behalf, and shall be served by a person authorized to receive payment.

#### NOTES.

The section corresponds to sec. 120 of B. M. Act.

"It has been suggested by the Accountant-General that municipal accounts can be simplified if the necessity of serving first a bill and then a notice of demand is done away with. We have provided therefore for a public notification to warn tax-payers that the tax has become due and for the issue of a notice of demand only, the latter being a necessary preliminary to the issue of a warrant." Report of the Select Committee, para. 48. The section as it stood in the Original Bill was similar to the corresponding section 120 of B. M. Act the Select Committee amended it in the way as the present section stands.

The section does away with the necessity of serving of a bill; what the Commissioners have to do under the section is to notify by public proclamation or in some suitable manner the fact that the tax has become due and this they have to do within the first fourteen days of the quarter. If the tax is not paid within 14 days of the beginning of the quarter, a notice of demand in the prescribed form shall issue. If within 15 days of the service of the notice payment is not made a distress warrant may issue under sec. 124.

**Notice of demand:**—Notice of demand shall not be issued for any tax which has become due more than six months ago. The notice must be signed by the Chairman or by an officer authorised in that behalf and it must be served by persons authorised to receive payments.

The notice of demand must be in Form O of the Account Rules and these forms are prescribed by Local Government Rules. See sec. 168. All the prescribed requirements of the notice must be fulfilled, i.e., first there must be a public proclamation within the first fourteen days of a quarter that

the tax is due and if within fourteen days of it no payment is made then a notice of demand signed by the Chairman, or by a proper officer in Form O is to be served on the person liable to pay the tax, by a person authorised to receive payment. The notice of demand is to be served as promptly as possible after the expiry of 14 days from the time the tax becomes due and it cannot be issued and served for any tax which has become due more than six months ago. The distress warrant cannot be issued until at least the expiry of 28 days from the time when the tax becomes due and it can be issued at any time within six months of the service of the notice.

If the notice of demand is the first one under the assessment, the person served with it can apply for review under sec. 116.

The importance of the provision is obvious in view of sec. 124, which only permits warrants being issued within 6 months of the service of the notice of demand. The Commissioners must see that they have fulfilled the requirements of this and the following section otherwise the warrants will not be legal.

Service of notices, etc., are prescribed by sections 357 and 358 and they have to be done in those ways.

If the owner of a holding is unknown or its ownership is disputed a special procedure is enacted in sec. 369, which will have to be followed. The procedure prescribed by this section apply to the recovery of sums due as taxes only and the same procedure apply to the recovery of costs, expenses, rents, fees, tolls or other moneys due under the Act (vide sec. 368).

Levy by distress on failure to pay tax.

**124. If any person after service upon him of such notice does not, within fifteen days of the service of such notice or from the date of any order made on an application for review under section 116, pay the sum due, either to the Commissioners at their office or to some person authorized by them to receive the money, or show to the Commissioners sufficient cause for not paying the same, the amount of the arrear due, with costs according to the prescribed scale of fees, may at any time within six months after the date of service of the said notice, or of the order made on an application for review as aforesaid, be levied by distress and sale of any movable property belonging to the defaulter (except ploughs, plough-cattle, tools or implements of agriculture or trade and articles required for worship or prayer) wherever found, or of any movable property belonging to any other person (subject to the same exceptions)**

which may be found within the holding in respect of which such defaulter is liable to such tax:

**Provided that,** when the holding in respect of which the default is committed is a place of business and the movable property distrained is shown to the satisfaction of the Commissioners to have been left there for repairs or safe custody in the ordinary course of business, it shall be released;

**Provided also that** if the said property or any part thereof belongs to any person other than the defaulter, the defaulter shall be liable to indemnify the owner thereof for any damage he may sustain by reason of such distress, or by reason of any payment he may make to avoid such distress or any sale under the same.

#### NOTES.

The section corresponds to sec. 121 of B. M. Act.

"It has been held by the Civil Courts that under sec. 120 of the Bengal Act the Commissioners can issue only one notice of demand. That being the case, the period of three months from the date of its service allowed by section 121 for the issue of process of distress has been found too short. It is therefore proposed to extend it to six months."

"The Schedule of Fees payable on distraint has been omitted. The fees will be prescribed by rules, as will also the form of distress warrant, and the various other forms connected with the recovery of taxes." Notes on Clauses, para 63.

**Procedure:—**The person assessed has fifteen days' time from the service of the notice of demand, or if the notice of demand is the first notice of assessment on him and he applies for review of the assessment, then from the date of the order under sec. 117 on his application, to make the payment, if that time elapses without payment, a warrant will issue and if on sight of it the arrear amount together with the fee is not paid in full, the collecting officer should then attach any movable property (with certain exceptions) of the person against whom the warrant is addressed. If there is a separate Warrant Department they should take the steps (See Account Rules, rule 46).

The Commissioners may also proceed by suit in the Civil Court for realisation of the arrears. See sec. 130.

**Limitation:—**When a notice of demand has been duly served under sec. 123, the warrant must be issued within six months from the date of service of the notice or if the owner or occupier has applied for review of his assessment then within six months from the date of the final order on

the application. The period of six months' limitation is absolute no notice can be served and a fresh period of six months cannot be taken by including the same old arrears in a subsequent notice of demand.

"The Commissioners cannot issue a second notice of demand." Opinion of the Advocate-General and the Legal Remembrancer communicated to municipalities by Govt. Circ. (Muni.) No. 14 T. M. of 2nd September, 1902.

**Costs according to the prescribed scale of fees:**—the fees payable upon distraint are fixed by rules made by the Local Government under section 168.

**Movable property:**—There is no definition of movable property in this Act, as in sec. 6 (6) of the B. M. Act where it is defined as "property other than immovable property."

The doors and window shutters of a pucca building form part of the immoveable property and cannot be attached as they have no separate existence. *Peru Bapari vs. Ronuo Maifarash*, 11 Cal. 164.

The outer doors of a house are not attachable as movable property under the District Municipalities Act (Madras Act IV of 1884) sec. 108 (a similar section). *Queen Empress vs. Sheikh Ibrahim*, 18 Mad. 519.

The doors of a house cannot be removed in execution of a warrant of distress. *Purushottama vs. Municipal Council of Bellary*, 14 Mad. 467. "Defaulter" is the person on whom notice has been served under sec. 102 of the Madras Act. *Ibid*, 14 Mad. 467.

**Wherever found:**—Where distress warrant authorised the distraint of the movables of the defaulter, wherever found within the municipality, or any other movables found within the holding specified, it was held that the tax daroga was justified in attaching goods proved to belong to the defaulters, which were found within the municipal limits. In this case the distress warrant purported to be against the firm of Haridasi Baroda Kanta Chatterji the shop was closed when the tax daroga went to attach and he proceeded to another shop opened in the name of Minto Brothers, but which he was informed was owned by the owners of the shop of Haridasi Baroda Kanta Chatterji and there he attached some ten tins of red powder in execution of the warrant, held he could do so and if the peon was assaulted he could maintain a case under sec. 186 I.P.C. *Fanindra Nath Chatterji vs. Emperor*, 86 Cal. 67.

**Property exempted:**—They are implements of agriculture or trade and articles of worship or prayer. See also sec. 60 Civil Procedure Code in this connection.

**Proviso:**—If the attachment is made of any properties lying in a holding which is a place of business and if it is proved to the satisfaction of the Commissioners that the properties attached do not belong to the defaulter but to some body else who had kept them there for repairs or safe custody then the attached properties shall be forthwith released.

The second proviso gives relief to a person who is compelled to pay the full amount to save his own properties from distress and sale or who is put to loss on account of such distress and sale and enables him to sue the defaulter for compensation for such loss.

Forms of warrants are prescribed by the Local Government rules under sec. 163.

Distress how to be made. **125. (1) Every warrant of distress and sale under the last preceding section shall be issued by the Commissioners, and shall be in the prescribed form.**

**(2) Distress shall be made by actual seizure of movable property, and the officer charged with the execution of the warrant shall be responsible for the due custody thereof.**

**(3) Such officer shall make an inventory of all movable property seized under the warrant, and shall give not less than ten days' previous notice of the sale and of the time and place thereof by beat of drum in the municipality or ward in which the property is situated, and by serving on the defaulter a notice in the prescribed form:**

**Provided that if the property is of a perishable nature it may be sold at once with the consent of the defaulter, or without such consent at any time after the expiry of six hours from the seizure.**

#### NOTES.

The section corresponds to sec. 122 of B. M. Act.

The form of warrants are to be prescribed by the Local Government under sec. 163.

The warrant shall be given to any officer of the Commissioners by name for execution and shall be signed by the Chairman or Vice-Chairman, or by any Commissioner to whom power may have been delegated under section 25.

Officer may break open door. **126. The officer charged with the execution of the warrant may, under the special order of the Commissioners, between sunrise and sunset break open any outer or inner door or window of a house in order to make the distress if he has**

reasonable ground for believing that such house contains any movable property belonging to the defaulter, and if, after notification of his authority and purpose and demand of admittance duly made, he cannot otherwise obtain admittance:

Provided that he shall not enter or break open the door of any room appropriated for the *zanana* or residence of women, which by the usage of the country is considered private, except after three hours' notice and opportunity given for the retirement of the women.

#### NOTES.

The section corresponds to sec. 123 of B. M. Act.

Sale how to be conducted. 127. (1) If the sum due be not paid with costs before the time fixed for the sale, or the warrant be not discharged or suspended by the Commissioners, the movable property seized shall be sold by auction, at the time and place specified, in the most public manner possible, and the proceeds shall be applied in discharge of the arrears and costs.

(2) The surplus sale-proceeds (if any) shall be credited to the municipal fund, and may be paid on demand to any person who establishes his right to the satisfaction of the Commissioners or in a court of competent jurisdiction.

(3) The tax-collector or other officer authorized in that behalf shall make a return of all such sales to the Commissioners in the prescribed form.

#### NOTES.

The section corresponds to sec. 124 of B. M. Act.

The register of distrains and sales is kept in Form N of the Account Rules and is to be preserved permanently. Circ. (Munl.) No. 89M. of 10th September, 1894.

A regular account of all distresses levied and sales made is to be kept by the Commissioners. See sec. 129.

Sub-sec. (3):—the returns by the tax-collector are to be made in forms prescribed by the Local Government under sec. 168.

Sale of property beyond limits of municipality. 128. If no sufficient movable property belonging to a defaulter, or being upon the premises in respect of which he is assessed, can be found within the municipality, the Magistrate may, on the application of the Commissioners, issue his warrant to any officer of his Court for the distress

and sale of any movable property or effects belonging to the defaulter any other part of the jurisdiction of the Magistrate, or for the and sale of any movable property belonging to the defaulter within the jurisdiction of any other Magistrate exercising jurisdiction within Bihar and Orissa, and such other Magistrate shall endorse the warrant so issued, and cause it to be executed and the amount, if levied, to be remitted to the Magistrate issuing the warrant, who shall remit the same to the Commissioners.

### NOTES.

The section corresponds to sec. 127 of B. M. Act.

The section provides for the realisation of taxes from persons who have not sufficient properties within the municipality from which arrears of taxes can be realised. In such cases the Commissioners may apply to the Magistrate of the locality in which the holding is situate to issue a warrant to any officer of his court for the realisation of the arrears, etc., to be executed on any property found within the jurisdiction of the Magistrate and the latter officer will execute it; or the Magistrate may be moved to issue a warrant for the realisation of the arrears to any other magistrate exercising jurisdiction within the province of Bihar and Orissa and in whose jurisdiction the defaulter has properties and the officer on receipt of such warrant shall endorse his signature on it and cause it to be executed by any of his officers and transmit the amount if realised to the Commissioners concerned.

The Magistrate's function under the section seem to be purely ministerial, because there is no provision indicating that the Magistrate is applied to in his judicial capacity and there is no provision for a judicial dealing with the case by him. The section provides the means whereby the recovery of taxes can be enforced by legal authority outside the limits of the municipality, and does not impose on the magistrate any duty of judicial inquiry such as for instance, deciding upon the legality of a tax. If the Legislature intended to impose upon the magistrate the duty of judicial enquiry and finding it would have used appropriate words. See *In re W. J. Ellis vs. The Municipal Board of Mussoorie*, 22 All 111 where it was so held when a magistrate acted under sec. 46 (a similar section) of Act XV of 1888 (N. W. P. and Oudh Municipalities Act) and issued a warrant for the realisation of arrears of municipal taxes alleged to be due.

On an interpretation of sec. 84 of the Bombay Act VI of 1878 it was pointed out that the words in that section imported a judicial determination



and it was held that under the section the Magistrate was bound before sentencing a defaulter to pay a rate to satisfy himself as to the extent of his legal liability. *Municipality of Ahmedabad vrs. Jumna Punja*, 17 Bom. 781.

Warrants under this section can be issued only within the Province of Bihar and Orissa and not outside.

**Applications to the magistrate.** Such applications would appear to fall within Sch. II, 1 (b) of the Court Fees Act and would require a stamp of twelve annas.

Commissioners to keep regular accounts of distresses and sales.

**129. The Commissioners shall cause a regular account to be kept of all distresses levied, and sales made, for the recovery of taxes under this Act.**

#### NOTES.

The section corresponds to sec. 126 of B. M. Act.

The accounts of all distrained properties, their sales and realisations of the arrears are to be kept in a register and the register is to be kept in Form N of the Account Rules and is to be preserved permanently. See notes to sec. 127.

Commissioners may bring suits instead of distraining or on failure of distress.

**130. Instead of proceeding by distress and sale, or in case of failure to realise thereby the whole or any part of any tax, the Commissioners may sue the person liable to pay the same in any court of competent jurisdiction.**

#### NOTES.

The section corresponds to sec. 129 of B. M. Act.

In order to realise the taxes the Commissioners may by complying with the provisions in secs. 128 to 125 seek to realise the arrears by distress and sale of the properties of the defaulter, or they may institute suits for their recovery in the Civil Courts. Suits can be instituted even after the warrants of distress have failed.

Unless the Commissioners comply fully with the requirements of secs. 128 to 125 they can only recover the arrears by suits. Such suits will lie in the Small Cause Courts. See *Brojanath Mittra vrs. Gopi Shaktani*, 28 Cal. 885.

Limitation for such suits is 6 years under Art 120 of Sch. I of the Limitation Act, there being no other limitation provided for in the Schedule to the Limitation Act.

Where a debt lies on a Statute an action for the debt is governed by Art 120 of the Limitation Act and the suit may be instituted within six years. *President of Municipal Commissioners, Gantoor vrs. Srikakulope*, 8 Mad. 124.

The section refers to any tax and applies generally to any tax leviable under the Act. It seems to include any fees, costs, expenses, rents and other monies due under this Act and which are realisable in the same way as taxes. See sec. 368.

**131. The Commissioners may order to be struck off the books the amount of any tax which may appear to them to be irrecoverable.**

Irrecoverable taxes.

#### NOTES.

The section corresponds to sec. 180 of B. M. Act.

As soon as a tax is six years old it is irrecoverable by suit and after this period it must be written off. This may be done by the Chairman himself as it has not to be done by the Commissioners at a meeting; but the matter should rather be put up before the Municipal Commissioners and decided in a meeting.

If certain bills were struck off the books by a resolution and in a subsequent meeting the Municipal Commissioners rescinded the former resolution and revived the cancelled bills and recovered the amounts by distress warrants, in a suit against the Chairman for recovery of the amounts on the grounds that the Commissioners had no power to recover cancelled bills held, that the Municipal Corporations have the power to revive cancelled bills. *Chairman, Santipur Municipality vrs. Dina Nath Ghosh*, 2 C.W.N. xxiii.

**132. All officers and servants of the Commissioners and all chaukidars, constables and other officers of police are prohibited from purchasing any property at any such sale.**

Certain persons prohibited from purchasing at sales.

#### NOTES.

The section corresponds to sec. 125 of B. M. Act.

"In view of the provisions of clause 40 (sec. 41) the latter part of section 125 of the Bengal Act need not be reproduced in the Bill. Disobedience can be punished under the Indian Penal Code, section 169." Notes on Clauses, para 64.

The second part of sec. 125 of the B. M. Act prescribed the penalty for disobedience of the provisions of sub-clause (1) and ran thus:

"Whoever (not being a public servant within the meaning of section 21 of the Indian Penal Code) contravenes the provisions of this section shall be punished with simple imprisonment for a term which may extend to two months or with fine or with both."

The section declares what persons are prohibited from buying at sales held by the municipality, *Chaukidars*, constables and other officers who are public servants under sec. 21 of the I. P. C. and some officers of the municipality who would be public servants within the tenth and eleventh descriptions in sec. 21 of the I. P. C. would be liable to punishment under sec. 169 of the I. P. C. for an infringement of this prohibition. But other officers and servants of the Commissioners who do not come within the definition of "public servants" would not be punishable under sec. 169 I. P. C. if they take part in such sales; the second clause in section 125 of B. M. Act was enacted to provide some punishments for infringements by such officers. In the present section there being no such provision for dealing with such officers and servants they can be dealt with only departmentally and not criminally.

**Officers of the Commissioners:**—defined in sec. 3 cl. (17) of this Act and means a person holding for the time being an office created or continued by or under this Act, but does not include a Municipal Commissioner or the member of a Committee or Joint Committee constituted under this Act.

#### RECOVERY IN SPECIAL CASES.

**133.** If the sum due from the owner of any holding remains unpaid after the notice of demand has been duly served, and such owner is not resident within the municipality, or the place of abode of such owner is unknown, the same may be recovered from the occupier for the time being of such holding, who may deduct from the next and following payments of his rent the amount which may be so paid by or recovered from him:

Recovery from occupier of tax due from non-resident owner, and deduction from rent.

Provided that no arrear of rate which has remained due from the owner of any holding for more than one year shall be so recovered from the occupier thereof;

Provided also that if any such holding is occupied in severalty by more than one person, the sum recovered from any one such person shall not exceed such amount as shall bear to the total sum due the same proportion as the value of the part of the holding in the occupation of such person bears to the entire value of the holding.

## NOTES.

The first part of the section and the first proviso corresponds to sec. 105 of B. M. Act and the second proviso corresponds to sec. 323 of the B. M. Act.

The second proviso seems to be rendered necessary by the decision arrived at in the case of Syed Shah Hamid Hosseain, 17 C.L.J. 181." Notes on Clauses, p. 65.

The notice of demand is issued under sec. 123.

**Resident:**—the word "resident" in this section would appear to have been used in its ordinary sense. The word has not been defined in this Act, but has been defined in the Election rules—rule 2 cl. (f). See notes to sec. 15 ante.

The section is intended to facilitate the collection of taxes; when therefore the owner does not ordinarily reside within the limits of the municipality and his place of residence cannot be found out the taxes may be recovered from the occupier—who is given the right to deduct the amounts so paid by him from the rents payable by him to the owner. But any arrears of taxes which have remained due from the owner more than a year cannot be realised from the occupier.

### Second proviso:—

In Hamid Hossein *vs.* Patna Municipality, 17 C.L.J. 181—17 C.W.N. 812 which was a suit to obtain a declaration that an assessment of rates was *ultra vires* on the grounds (1) that the holding in respect of which he had been assessed had been arbitrarily created by the municipal authorities in contravention of the provisions of the Statute, (2) that as there were intermediate holders between the plaintiff and the actual occupiers of the land, the plff. was not liable to be assessed; (3) that inasmuch as the occupiers of some of these holdings have been assessed in respect of houses and gardens standing thereon, the plff. ought to be exempted from assessment, it was held that the basis of the assessment of rates, was occupation. Rate was determined by the gross annual rent at which the holding might be reasonably expected to let and the rate so determined was to be paid in quarterly instalments by the owner. Consequently when the owner himself was in occupation he was himself liable for the rate. When there was an occupier under the owner who was in actual occupation of the holding, although the rate was assessed upon the annual rent, yet it was the owner who was held primarily liable for the payment thereof. If there were several persons intertested in a particular parcel of land, whatever the grade of his interest might be, each could not be liable to be assessed with tax, based on the gross annual rental. The Legislature never intended that the same parcel of land should be liable to be assessed twice or thrice over. The term "holding" as used in the B. M. Act means land held by an

occupier under one title or agreement and surrounded by one set of boundaries. It was the duty of the municipality to ascertain whether a particular parcel of land was held by an occupier under one title and whether it was comprised within one set of boundaries. If it was land of this description the rate would be assessed upon it on the gross annual rental and the rate becomes payable by the owner that is to say the person above the occupier if the occupier is not the owner. Separate holdings could be constituted according to the occupation of the lands by different tenants.

The section along with secs. 134, 135 and 136 creates a civil right in the owner which is enforceable in a Court of law. The holding tax is payable by the owner (sec. 100) and if it is realised from the occupiers in any case, then the occupier can reimburse himself by deducting from the rent payable to the owner.

Recovery by owner  
from tenant of three-  
fourths of water-tax.

**134. When the owner of a holding has paid water-tax in respect thereof it shall be lawful for him, if there is but one occupying tenant of the entire holding, to recover from such tenant three-fourths of the entire amount of the tax which has been so paid by such owner, and if there is one occupying tenant of a part of the holding or more than one occupying tenant of the holding, then to recover from such tenant or each of such tenants such sum as shall bear to three-fourths of the entire tax paid by the owner, the same proportion as the value of the portion of the holding in the occupation of such tenant bears to the entire value of the holding, subject, however, to the provisions of section 136.**

#### NOTES.

The section corresponds to secs. 281 and 313 of B. M. Act.

The water-tax is payable by the owners subject only to this restriction that if the holding is in the occupation of tenants, then as they directly get the benefit from the water-supply, three-fourths of the water-tax is payable by them and only one-fourth is payable by the owner (see sec. 100 and notes thereto). If the owner pays the whole tax and the holding is in the occupation of tenants, the owner can recover from them three-fourths of the entire water-tax paid by him.

Levy of latrine tax  
from owner in certain  
cases.

**135. If any holding is occupied in severalty by more than one person, the Commissioners may levy the latrine tax from the owner of such holding who may recover from each occupier such sum as shall bear to the entire**

amount of the tax so levied the same proportion as the value of the part of the holding in the occupation of such person bears to the entire value of such holding.

#### NOTES.

The section corresponds to sec. 323 of B. M. Act.

The latrine tax is payable for the service that is rendered to the occupier of the holding and it is payable by the occupier under sec. 100, but if the holding is occupied by several tenants the Commissioners instead of levying the tax from all of them may recover the tax from the owner who under this section is empowered to recover the entire amount paid by him from the different occupiers in proportion to the value of the parts in their respective occupations.

Recovery as rent of  
tax so paid by owner.

**136.** Every owner, who under the provisions of the two last preceding sections is entitled to recover any sum from any occupying tenant of any holding or of any portion thereof, shall have for the recovery of such sum all such and the same remedies, powers, rights and authorities as if such sum were rent payable to such owner by such tenant in respect of so much of such holding as may be in the occupation of such tenant.

#### NOTES.

The section corresponds to secs. 314 and 324 of B. M. Act.

Any owner, who has paid either, the full water-tax although the holding is occupied by tenants, or latrine tax which is payable entirely by the occupier, is under this section given full rights to recover three-fourths of the tax in the first case and the entire amount in the second case from the occupiers and can recover the amounts from them in proportion to their respective occupations, as if they were rents. The owner has for the recovery of such amounts all the rights which he has for the recovery of rents.

#### IV. THE TAX ON VEHICLES, HORSES AND OTHER ANIMALS.

Tax on vehicles,  
horses and other animals.

**137. (1)** When it has been determined that a tax on vehicles, horses and other animals specified in the First Schedule shall be imposed, the Commissioners at a shall, subject to the provisions of section 128, make an order that owner of every vehicle, horse and every other animal of the kind specified in the said schedule, which is kept or is used in the ordinary within the municipality, or which is kept without the municipality is used in the ordinary course within it, shall pay the tax in respect

such vehicle, horse or other animal and shall cause such order to be published in the manner described in section 356.

(2) Such order shall be published at least one month before the beginning of the half-year in which such tax will first take effect; and shall specify at what rates, not exceeding the rates given in the said schedule, such tax shall be levied.

(3) Such tax shall not be payable in respect of—

- (a) carts;
- (b) vehicles and animals registered under Chapter X;
- (c) vehicles and animals exempted from any municipal tax under section 34 of the Auxiliary Force Act, 1920, or under the Municipal Taxation Act, 1881;
- (d) horses used by police officers, at the rate of not more than one for each officer;
- (e) vehicles, other than motor vehicles, the wheels of which do not exceed twenty-four inches in diameter; or
- (f) vehicles or animals kept for sale by any bonafide dealer in such vehicles or animals, and not used for any other purpose.

#### NOTES.

“ No great change has been made in the provisions relating to the tax on vehicles, horses and other animals except that motor-cars, jinrickshaws and push-pushes have been made liable to taxation in the Schedule. The wear and tear of the municipal roads by motor-vehicles fully justifies their taxation. Vehicles and animals registered under Chapter X are exempted from double taxation by sub-clause (b) of clause 138 (3) [sec. 137 (3)].”  
Notes on Clauses, para. 66.

The section corresponds to sec. 131, of B. M. Act.

**Determined:**—by the Commissioners at a meeting specially convened with the sanction of the Local Government under section 82 (1) (f).

**Vehicles:**—defined in sec. 3 cl. (30) means a wheeled conveyance capable of being used on a road and includes a motor car, tricycle, bicycle, a jinrickshaw and a shampani. See notes to sec. 3 cl. (30). After the imposition of tax is sanctioned under sec. 82 (1) (f) the Commissioners at another meeting shall by a resolution issue an order that all owners of every vehicle, horse, etc., which is kept within the municipality or kept without but used in the ordinary course of business within

the municipality shall pay tax in respect of such vehicle, horse, etc., and shall publish the order in the manner prescribed by sec. 856 at least one month before the beginning of the half-year in which the tax shall be levied; this rate must not exceed the rate given in Sch. I to this Act.

**Used in the ordinary course within it:**—this phrase qualifies both the preceding relative clauses, which begin with the word “which” and are closed by the words “the municipality.” Hence the effect of the whole sentence appears to be that the vehicles, etc., must be used in the ordinary course within the municipality if they are liable to be taxed and that if they are not so used, they are not liable to be taxed.

The words “in the ordinary course” are defined in sec. 150 according to which a vehicle, horse or other animal shall be deemed to be used in the ordinary course within the meaning of section 137 if it is used on an average thrice a week. Vehicles, etc., plying for hire do not come under this clause as under Chapter X they are liable to pay a fee and they cannot be taxed twice. See sub-section 3 (b).

Vehicles, horses, etc., which in the ordinary course are kept within the municipality or used within the municipality or which are kept outside but are used within the municipality are liable to be taxed, except those which are kept for sale by any *bona fide* dealer in vehicles or animals and are not used for any other purpose. It seems that vehicles, etc., simply kept within the municipality but not for sale by *bona fide* dealers whether they are used or not are liable to be taxed.

“The words ‘of business’ after the words ‘in the ordinary course’ which were in the original section have been omitted by the Select Committee as they tend to convey the impression that vehicles used for pleasure were excluded.” Report of the Select Committee, para. 49.

**Sub-section (3):**—This clause enumerates those vehicles, etc., which are exempt from payment of the tax under sub-section (1), fixed fees are charged for them under the other provisions of this Act.

**Clause (a):**—as a fee is prescribed for registration of carts they cannot be doubly taxed under sec. 82 (1) (f) and sec. 82 (1) (i).

**Clause (b):**—Chapter X secs. 326—328 relates to vehicles plying for hire and animals employed in them. They are liable to pay a fee for registration under sec. 326 and so they are exempted from paying this tax.

**Clause (c):**—these exemptions are created by Statute and must be observed.

According to Sch. I to the Act motor cars, motor cycles, jinrickshaws and push-pushes have been made liable to taxation. The wear and tear of



the municipal roads by motor vehicles fully justifies their taxation. See Notes on Clauses para. 66 quoted above.

Any petition of appeal against this tax is exempt from court fees by sec. 19 (xxi) of the Court Fees Act.

Powers to exempt vehicles or class of vehicles from taxation.

**138. In making an order under section 137, or by a subsequent order, the Commissioners at a meeting may exempt from the tax any vehicle or class of vehicles specified in the aforesaid schedule.**

#### NOTES.

This section is new, there is no corresponding section in the B. M. Act.

"This clause empowers the Commissioners to exempt any vehicle or class of vehicles from tax." Notes on Clauses, p. 67.

The class of vehicle or any vehicle to be exempted depends on the discretion of the Commissioners.

Duration of tax.

**139. Any order of the Commissioners imposing a tax under section 137 shall continue in force until rescinded, and the tax shall be levied at the rates specified in the order published as aforesaid, unless and until the Commissioners at a meeting, held not less than fifteen days before the end of the year, make and publish an order specifying any different rates at which the tax shall be payable for the ensuing year.**

#### NOTES.

The section corresponds to sec. 182 of B. M. Act.

The Commissioners at a meeting might really consider whether any change in the rate is necessary before the budget is prepared. This section empowers them to vary the rates and by a resolution in a meeting they may make an order varying the rate of tax and publish it in the manner prescribed by section 356. The meeting must be held at least 15 days before the end of the year and the publication of it must be made before the end of the year and realisations at the varied rate should be made from the ensuing year.

Half-yearly statement of liability, and payment of tax.

**140. (1) In any municipality in which a tax has been imposed under section 137 the owner of every vehicle, horse and other animal specified in the aforesaid schedule shall, within the first month of each half-year, forward to the Commissioners a statement in writing, signed by him, containing a description of the vehicles, horses and other animals liable to the tax, for which he is bound to take out licence.**

(2) Such owner shall, at the time, pay to the Commissioners such sum as shall be payable by for the current half-year for the in such statement, according to the rates specified in any order for the time being in force under section 137 and 139.

#### NOTES.

The section corresponds to sec. 138 of B. M. Act.

The section makes it obligatory on the owner of any vehicle, horse, etc., on which an order for imposition of tax has been issued by the Commissioners to submit a statement in writing signed by him giving a description of the vehicles, etc., in his possession which are liable to be taxed and at the same time pay the tax along with it.

To facilitate the procedure, printed statements in a form prescribed may be obtained, these should be distributed. See Municipal Account Rules.

The tax must be legally imposed before it can be realised. The Legislature has imposed certain duties both upon the tax-payer and upon the Commissioners, but the tax must be legally sanctioned at the period at which the duties laid upon the tax-payer are to be performed. *Leman vrs. Damodaraya*, 1 Mad. 158.

In a certain case the accused applied for a license for two carriages and six ponies making the usual statement and payment of fees a license was granted but at the same time the statement was sent for verification to the overseer who reported that the accused had eight ponies and one horse; the Chairman then made an order to prosecute the accused for making a false statement regarding the number of animals; on a motion to the High Court to quash the proceedings it was held that the Municipal Act was intended to be complete in itself as regards offences committed against the Municipal Commissioners and there was no indication of any intention to render a delinquent also liable to punishment under the Penal Code. There is no penalty in the Act attached to the omission to make a return under sec. 133 (sec. 140 of this Act) and no words in the Act constituting the making a false return a penal offence; and as there are no such words in the Act as are necessary to make the provisions of the Penal Code applicable, the court has no power to import them. The Municipal Commissioners in such a case have the remedy provided by the Act itself. *Chandi Prasad vrs. Abdur Rahaman*, 22 Cal. 181.

Under this Act the Commissioners have power to test the accuracy of any statement by inspection under sec. 147 and to punish offenders under sec. 144; this is the remedy which the Act gives them and they are not entitled to go beyond it.

Proportionate tax on vehicles, etc., acquired during the half-year.

**141. If any person acquires possession, at any time after the commencement of any half-year, of any vehicle, horse or other animal specified in the aforesaid schedule in respect of which no licence has been given for such half-year, he shall forward a statement as above required within one month of the date on which he may have acquired possession thereof, and shall pay such amount of the tax as shall bear the same proportion to the whole tax for the half-year as the unexpired portion of the half-year bears to the half-year; and such amount shall be calculated from the date on which such person may have acquired possession as aforesaid.**

#### NOTES.

The section corresponds to sec. 184 of B. M. Act.

It is only in case, in which the vehicle or animal of which possession changes, had not been licensed for the half year that a tax for the unexpired portion has to be paid and a license taken out; but if a license had been obtained in respect of it no further tax has to be paid for it.

The section would apply when a new vehicle or animal is acquired in the place of an old one.

One N having taken out a license under the provisions of the Town Improvement Act 1871 (Madras) for a bullock, the bullock died and N brought another bullock but did not take out a second license. N was convicted for keeping the bullock without a license under sec. 65 (a section similar to this section) of the Act the case having been referred to the High Court it was held that when a tax is imposed upon a carriage or animal it is imposed upon the particular carriage or animal and a person becoming possessed of an unlicensed animal within a half year is not at liberty to transfer to it a license taken out for another which has died or been sold. If the tax has been paid on any carriage or vehicle and a license obtained in any municipality for a particular half-year, the payment of the tax cannot be enforced by any other municipality for that half-year although there may have been a change of ownership. In the case it was not pleaded that the tax had already been paid for the animal in question, so the conviction was affirmed. Municipal Commissioners of Mannargudi *vs.* Nallapa, 8 Mad. 327. But in cases where a vehicle is destroyed or an animal cease to be employed in the municipality the owner may apply under sec. 148 for a refund for the unexpired portion of the half-year.

Grant of licence on  
payment of tax.

**142. (1) On receiving the amount of the tax due as aforesaid the Commissioners, or some person authorized by them in that behalf, shall give to the person paying the same a licence for the several vehicles, horses and other animals for the period in respect of which the amount is received.**

**(2) Such licence shall be for the current half-year and no longer.**

#### NOTES.

The section corresponds to sec. 135 of B. M. Act.

On receiving the statement and the amount of tax under sec. 140 the Commissioners must give the applicant the licence which he has asked and paid for and they have no power to refuse it in any case, and if at the time it was applied for the person to whom the application was made knew that the person who was applying for a licence for one horse had twenty in his stables, he could not under any provision in this Act refuse the licence for the one horse for which the tax was paid. He could not also be prosecuted for making a false statement under any section of the Penal Code if he incorrectly gave the number of animals in respect of which he applied for the licence. *Chandi Pershad vrs. Abdur Rahman*, 22 Cal. 181.

The remedy of the Municipality lies under secs. 147 and 144. See also notes to sec. 140.

The licence is to be prepared as soon as the tax is paid, and not before

Liability in absence  
of owner.

**143. Whenever the owner of any vehicle, horse or other animal liable to pay the said tax is not resident within the limits of the municipality to the Commissioners of which the tax is due, the person in whose immediate possession the vehicle, horse or other animal is for the time being kept shall take out a licence for the same.**

#### NOTES.

The section corresponds to sec. 136 of B. M. Act.

The primary responsibility for taking out a licence for a vehicle, or animal lies on the owner but if he is not a resident within the municipality and does not take out the required licence then the man in charge of them must pay the fee and take out the licence.

Penalty.

**144. Any person who keeps, or is in possession of, any vehicle, horse or other animal, without the licence required by any of the three last preceding sections, shall be liable to a fine not exceeding four times the amount payable by him in respect of such licence, inclusive of the amount so payable.**

## NOTES.

The section corresponds to sec. 187 of B. M. Act.

“ Under the Bengal Act the penalty for keeping an unlicensed vehicle or animal may extend to three times the amount of the license fee payable, but separate proceedings have to be taken for the recovery of the license fee actually due. It will facilitate recovery if in the fine is included the amount due to the municipality which will then be made over to the Commissioners by the Court.” Notes on Clauses, p. 68.

The prosecution would be instituted with the Commissioners' consent according to sec. 375. By the proviso to that section the failure to take out a license is a continuing offence and the prosecution can be instituted within six months of the date on which the commission or existence of the offence is first brought to notice; but not later than six months after the expiration of the period for which such license is required to be taken out.

**Inclusive of the amount:**—the words in the corresponding section 187 of the B. M. Act were “ exclusive of the amount.” Under the Bengal Act separate proceedings had to be taken for the realisation of the license fee actually due; but under the present section recovery of the fee is facilitated as it is included in the fine and when realised the fee is made over to the Commissioners; the fine has consequently been raised from three to four times.

Composition with livery stable-keepers. **145. The Commissioners at their discretion may compound for any period, not exceeding one year, with livery stable-keepers and other persons keeping vehicles or animals for hire, for a certain sum to be paid for the vehicles or animals so kept by such persons, in lieu of the tax at the rates specified in any order made by the Commissioners under sections 137 and 139.**

## NOTES.

The section corresponds to sec. 188 of B. M. Act.

See also sec. 88 for the power of the Commissioners to impose a consolidated tax assessed on the annual value of holdings.

**Livery stable-keepers:**—those who maintain a stable where horses are kept and maintained for hire. (Imp. Dic.)

Preparation of list of persons licensed. **146. The Commissioners shall, from time to time cause to be prepared and entered in a book, to be kept by them and to be open to the inspection of any person interested therein, a list of the persons to whom during the then current half-year**

a licence has been given, and of the vehicles, horses and other animals in respect of which they have paid the tax.

NOTES.

The section corresponds to sec. 139 of B. M. Act.

Power to inspect stable, etc. and to summon persons liable for the payment of the tax

**147. (1)** The Commissioners, or any person authorized by them in that behalf, may, at any time between sunrise and sunset, enter and inspect any stable or coach-house, or any place wherein they may have reason to believe that there is any vehicle, horse or other animal liable to the tax, for which a licence has not been duly taken out.

**(2)** The Commissioners may summon any person whom they have reason to believe to be liable to the payment of any such tax, or any servant of such person, and may examine such person or servant as to the number and description of the vehicles, horses and other animals in respect of which such person is liable to be taxed.

NOTES.

The section corresponds to sec. 140 of B. M. Act.

This section gives the Commissioners power to make inspection in order to test whether the statement furnished under sec. 140 is correct or not and whether any one is evading the tax on vehicles or taxable animals; yet they cannot make an inspection under the section unless they have reason to believe that something will be found, for which the owner is liable to be taxed and for which a license has not been taken out. Chandi Pershad *vs.* Abdur Rahaman, 22 Cal. 131, (187).

**Reason to believe:**—is defined in sec. 26 I.P.C. and seems to have the same meaning here. “A person is said to have ‘reason to believe’ a thing if he has sufficient cause to believe that thing but not otherwise.” Sec. 26, I.P.C.

**Sub-section (2):**—Service of summons has to be made as prescribed by secs. 357 & 358.

Every holder of a license must produce the license when required by the authorities or by any person authorised by them. See sec. 351.

Refund of tax in certain cases.

**148.** On proof being given to the satisfaction of the Commissioners that a vehicle, horse or other animal for which a licence has been taken out for any half-year has ceased to be kept or to be used within the municipality during the course of such half-year, the Commissioners shall order a refund of so much of the tax

for the half-year as shall bear the same proportion to the whole tax for the half-year as the period during which such vehicle, horse or other animal has not been kept or used in the municipality bears to the half-year; but no such refund shall be allowed unless notice be given to the Commissioners within one month of the time when such use of such vehicle, horse or other animal ceased, and, except for special cause shown, the Commissioners shall pass no order for refund until after the close of the half-year in respect of which the refund is claimed.

#### NOTES.

The section corresponds to sec. 141 of B. M. Act.

See also notes to sec. 187 in this connection.

Prohibition of double **149. Nothing in sections 137 to 148 shall be deemed**  
 cc. **to authorize the levy of more than one fee for the**  
**same period in respect of any vehicle, horse or other animal which is**  
**kept or used in more than one municipality.**

#### NOTES

The section corresponds to sec. 141 A of B. M. Act.

Even if a vehicle horse or other animal is used in more than one municipality, one fee is leviable in respect of it for the same period, to any one of the municipalities.

See sec. 161, cl. (3) in this connection by which provision is made for the levy of the registration fee by the municipality in which the cart is kept, but in this section there is no such provision but reasonably speaking the municipality in which the vehicles are kept is more properly entitled to the fee.

Meaning of "used in **150. A vehicle, horse or other animal shall be**  
 the ordinary course." **deemed to be used in the ordinary course within**  
**the meaning of section 137 if it is used on an average thrice a week.**

#### NOTES

The section corresponds to section 141 B of B. M. Act, which section was introduced in the Bengal Act by sec. 10, Bengal Act II of 1896 to supersede the decision in 28 Cal. 52. Legal Remembrancer *vs.* Shyama Charan Ghosh.

"The words 'of business' after the words 'in the ordinary course' which appeared in the original clause have been omitted from the section as they tend to convey the impression that the vehicles used for pleasure are omitted." Report of Select Committee, para. 49.

A vehicle horse or other animal if used on an average thrice a week within a municipality shall be taken to be used in the ordinary course within it so as to bring it within sec. 187 and make it liable to fees. This section seems to explain the words in sec. 187.

Whether a person, who visits a town and stays there using his carriage and houses for sometime would come within this description. See *Snaith vrs. McQuhae*, 7. M.H.C.R. 332, where he was held exempt from the tax.

#### V.—THE TAXATION AND REGISTRATION OF DOGS.

“ A tax on dogs has long been considered to be desirable both for the prevention of rabies and for suppression of the annoyance caused by the multitude of pariah dogs wandering about the municipalities. The registration of dogs will facilitate the destruction of ownerless animals. Under sec. 158 the tax on dogs and a registration fee cannot be levied in the same municipality. Clauses 358 & 359 (secs. 348 & 349) provide for the carrying of tokens by dogs in respect of which tax or fee has been paid.” Notes on Clauses, p. 43.

Tax on dogs.

**151.** When it has been determined that a tax on dogs shall be imposed, the Commissioners at a meeting shall, by a notice to be published at least one month before the beginning of the half-year in which such a tax is first to take effect, order that every owner of a dog within the municipality shall pay the tax at such rate, not exceeding two rupees per annum for each dog in his possession as may be specified in the notice.

#### NOTES

The section is new and there is no corresponding section in the B. M. Act. The tax on dogs is levied under sec. 82 (1) (g).

**Determined:**—by the Commissioners at a meeting specially convened for the purpose, with the sanction of the Local Government, by a resolution that thereafter a tax on all dogs within the municipality shall be levied.

After the above resolution of the Commissioners an order on all the owners of dogs to pay the tax at a certain rate not exceeding Rs. 2 per annum shall be issued and published at least one month before the beginning of the year in which the tax is to take effect. See sec. 187 and notes thereto *ante*.

Application of provisions as to tax on vehicles and animals to tax on dogs.

**152.** The provisions of sections 139, 142 to 144 and 146 to 148 relating to the tax on vehicles, horses and other animals shall be applicable to the tax on dogs in the same manner as if a dog were an animal included in the First Schedule.



## NOTES

The section is new and there is no corresponding section in the B. M. Act.

Section 139 relates to the duration of the tax, sec. 142 to the grant of license on payment of tax, sec. 143 to the liability of the possessor in the absence of the owner, sec. 144 to the penalty for keeping one without a license; sec. 146 to the preparation of lists of persons to whom licenses have been granted for the current year, sec. 147 to the power to inspect and summon persons liable to pay the tax and sec. 148 to the refund of tax in certain cases. All these provisions apply to the tax on dogs. See notes to the sections referred to above.

Registration of dogs

**153. The Commissioners at a meeting may make by-laws—**

(a) providing for the registration of dogs within the municipality; and

(b) providing for the imposition of an annual fee for such registration:

**Provided that, where in any municipality a tax on dogs has been imposed under section 82 sub-section (1), such by-laws shall provide that the registration of dogs shall be made without payment of fee.**

## NOTES

The section is new and there is no corresponding section in the B. M. Act.

The proviso to the section prescribes by implication that the tax on dogs and a fee for the registration of dogs cannot both be imposed at the same time.

The Commissioners at a meeting can under this section frame by-laws relating to the registration of dogs and the imposition of registration fee which can be imposed after the requirements under sec. 82 (1) (h) are fulfilled.

Sec. 348 provides for the carrying of tokens by dogs in respect of which registration fee has been paid failing which the dogs are liable to be destroyed and sec. 349 provides for the disposal of mad and stray dogs.

## VI.—THE REGISTRATION OF CARTS.

Registration and numbering of carts.

**154. (1) The Commissioners at a meeting may make and publish an order that every cart, which is kept or is used in the ordinary course of business within, or which is let for hire within or without, the municipality and is used in the ordinary course of business within it shall be registered**

secs. 142 & 143

by the Commissioners with the name and residence of the owner, and shall bear the number of registration in such a manner as the said Commissioners shall direct:

Provided always that such order shall be published at least month before the beginning of the half-year in which such order for registration shall be enforced.

(2) This section shall not apply to—

- (a) carts which are the property of the Government or of the Commissioners; or
- (b) carts which are kept without the limits of the municipality, and are only temporarily and casually used within such limits.

#### NOTES

The section corresponds to sec. 142 of B. M. Act.

" Cart " means a vehicle ordinarily drawn by animals and not ordinarily used for the conveyance of human beings. See sec. 8 (2) and notes thereto.

**And is used in the ordinary course of business within it:—**This phrase qualifies both the preceding relative clauses which begin with the word " which " and are closed by the words " the municipality." See notes to sec. 137.

The words " of business " are used in this section and not in sections 137 & 150. See notes to those sections for the omission of the words; the reason being that the words tended to convey the impression that vehicles used for pleasure were excluded. See Report of the Select Committee, para 49 quoted in the notes to those sections. Carts cannot be supposed to be kept for any pleasurable uses. Before the duty of registration can legally attach the Commissioners at a meeting must make an order that every cart kept or used in the ordinary course of business within the municipality must henceforth be registered, and publish it within the municipality according to section 356 at least one month before the beginning of the half-year in which it is to take effect.

**Registration:—**The duty of registration is laid on the cart owner and the penalty for non-registration is provided by sec. 159.

**Bear the number of registration:—**The Account Rules 86 & 89 of the B. M. Act prescribed tin tickets bearing a number to be issued to owners of carts for registration. The Account Rules of the present Act do not contain

any such provisions. Under the section the mode of affixing the number is to be prescribed by the Commissioners.

Under the Madras Act the removal of a portion of the axle on which the number had been painted from a damaged wheel and affixing the same to the repaired axle was held to be sufficient compliance with the provisions of law inasmuch as there was no by-law expressly laying down any particular mode of affixing. *Srinivas vrs. Municipal Council Kumbakonam*, 8 M.L.T. 405=18 M.L.J. 877.

**Exemptions:**—These are legal exemptions. The Government has power to prohibit the levy of any tax payable by the Secretary of State or by any person subject to the Army Discipline and Regulation Act 1879 or the Indian Articles of War and who is compelled by the exigencies of military duty to reside within the limits of a municipality. Sec. 8 of The Municipal Taxation Act (IX of 1881).

**155.** The registration of carts under the last preceding section shall be made, and the numbers assigned yearly or half-yearly, upon such days as the Commissioners shall notify, and such fee as they shall from time to time fix and notify, not exceeding four rupees if the registration has effect for a year, and not exceeding two rupees if the registration has effect for half a year, shall be paid for each registration.

Fee for registration.

## NOTES

The section corresponds to sec. 143 of B. M. Act.

The power to levy this fee is generally given by sec. 82 (1) (i). At first the Commissioners at a meeting has to impose a fee on the registration of carts according to the provisions in sec. 82 (1) (i) and then the Commissioners by observing the procedure prescribed in sec. 154 can give the measure a legal validity.

The maximum fee on registration of carts for a period of one year which the Commissioners can fix is Rs. 4.

A petition of appeal against the registration and fee is exempt from court fees by sec. 19 (xxi) of Court Fees Act.

Power to increase fees for carts with narrow tyres and rims.

**156.** Notwithstanding anything contained in section 155, the Commissioners at a meeting may make and cause to be published an order that, from the date specified in the order not less than twelve months after the publication of the order, the fee to be paid for the registration of any cart, any wheel of which has a rim or tyre of

less than two inches in width, shall be such sum as may be specified in the order, not exceeding eight rupees if the registration has effect for a year, or four rupees if the registration has effect for half a year.

### NOTES

The section is new and there is no corresponding section in the B. M. Act.

"Laden carts with narrow tyres and rims cause the chief damage to municipal roads; the imposition of an increased fee in their case will it is hoped discourage their use." Notes on Clauses, p. 70.

The order of the Commissioners fixing the fee for registration of carts with narrow tyres and rims at rates up to Rs. 8 must be duly made and published and in the order a date from which the tax is to take effect should be fixed and this date should not be less than one year from the date of the publication of the order.

**157.** Any person becoming possessed of any cart which has not been registered for the then current period of registration shall register the same within one month from the date on which he may have become possessed thereof, and the Commissioners shall grant registration in any such case on payment of such amount of the fee as bears the same proportion to the whole fee for the current period of registration as the unexpired portion of the current period of registration bears to the whole of such period; and such fee shall be calculated from the date on which such person may have become possessed as aforesaid.

### NOTES.

The section corresponds to section 144 of B. M. Act.

**158.** When the ownership of any registered cart is transferred within any period of registration, it shall be registered anew within one month of the transfer in the name of the person to whom it has been transferred, and a fee not exceeding four annas shall be paid for every such last mentioned registration.

### NOTES.

The section corresponds to section 145 of B. M. Act.

See notes to sec. 141 in this connection. In the case of a transfer of ownership of a vehicle, horse or any other animal in respect of which a license fee for the half year has been paid no fresh license fee has to be paid but in the case of transfer of ownership of carts they must be registered anew and a fee of four annas paid for the period for which the registration fee has been paid.

Penalty.

**153. Any person who keeps or is in possession of a cart not duly registered as required by any of the three last preceding sections shall be liable to a fine not exceeding four times the amount payable by him in respect of such registration, inclusive of the amount so payable; and whoever, being the owner or driver of any cart, fails to affix thereto the registration number as required by section 154 shall be liable to a fine not exceeding five rupees.**

#### NOTES.

The section corresponds to section 146 of B. M. Act.

Failure to take out a license is regarded as a continuing offence by the proviso to sec. 875 and the prosecution for it must be instituted within 6 months of the date on which the commission of the offence is first brought to the notice of the Chairman.

The failure to register a cart and to affix the registration number on it are both penalised by the section.

**Inclusive:**—see notes to sec. 144. The word in the corresponding section of the Bengal Act is "exclusive." To facilitate the realisation of the fee, it is realised along with the fine and after realisation is paid over to the municipality. See Notes on Clauses, para. 68 quoted in the notes to sec. 144.

**Affix:**—The Account Rules of the B. M. Act rules 86 and 90 prescribed that tin-tickets should be issued to owners of carts which have been registered; in the Account Rules of the present Act there is no such rule. Under this Act the mode of affixing the number is to be directed by the Commissioners. See sec. 154.

**160. (1) If any person owns or keeps any cart hereinafore required to be registered without having caused the same to be registered, the Commissioners, or any person authorized by them in that behalf, may seize and detain such cart (provided the same be not employed at the time of seizure in the conveyance of any passengers or goods), together with the animals drawing the same; and all police officers are required on the application of the Commissioners, or any servant of the Commissioners duly authorized in that behalf, to assist in the said seizure.**

**(2) After such seizure the Commissioners shall forthwith issue a notice in writing that after the expiration of ten days they will sell such cart and animals by auction at such place as they may state in the notice; and, if any registration fee, together with the cost arising from**

Seizure and sale of  
unregistered cart.

such seizure and custody, remains unpaid for ten days after the issue of such notice, the Commissioners may sell the property seized for payment of the said fee, and of all expenses occasioned by such non-payment, seizure, custody and sale.

(3) The surplus sale-proceeds (if any) shall be credited to the municipal fund, and may be paid on demand to any person who establishes his right to the satisfaction of the Commissioners or in a court of competent jurisdiction:

Provided that, if at any time before the sale is concluded, the person whose cart has been seized tenders to the Commissioners, or to the person authorized by them to sell the cart, the amount of all the expenses incurred and the registration fee payable by him, the Commissioners shall forthwith release the cart so seized.

(4) Notwithstanding anything contained in this section, the surplus of the sale proceeds of a cart seized under this section may be devoted to the payment of any fine imposed under the last preceding section; and any cart which has been seized under this section may be sold for the realisation of any such fine.

#### NOTES.

The section corresponds to section 147 of B. M. Act.

Suit for refund of the surplus money in deposit is governed by the six years rule or limitation under Art. 120 of the Limitation Act. Surplus sale proceeds are to be paid on demand to the person entitled unless it becomes barred.

Carts used or registered in more than one municipality.

151. (1) Nothing in sections 154 to 160 shall be deemed to authorize the levy of more than one fee for the same period in respect of any cart which is used in the ordinary course of business in more than one municipality.

(2) When carts not kept within any municipality are so used in more than one municipality, the Local Government on the application of the Commissioners of any such municipality may, if it thinks fit, apportion between all such municipalities the registration fees paid under this Act in respect of such carts.

(3) Where a cart is registered under this Act in more than one municipality, the Commissioners of the municipality within which the cart is kept shall have a right to levy the registration fee in preference to the Commissioners of any other municipality.

## NOTES.

The section corresponds to sec. 147 A of B. M. Act.

Only one registration fee is payable for a cart although it is used in the ordinary course of business in several municipalities, but it must be registered in all the municipalities. The registration fees can be apportioned by the Local Government between the several municipalities in which the cart runs if the cart is not kept within any one of them, but if it is kept within any municipality then that municipality is entitled to have the registration fee.

Meaning of "used in the ordinary course of business."

**162. A cart shall be deemed to be used in the ordinary course of business, within the meaning of sections 154 and 161, if it is used on an average twice a week.**

## NOTES.

The section corresponds to sec. 147 B of B. M. Act, which was inserted in the Bengal Act by sec. 11 of Bengal Act II of 1896 to supersede the decision in *Legal Remembrancer vs. Shyama Charan Ghosh*. 23 Cal. 52 which cast a doubt as to the exact scope of the words "habitually used" appearing in secs. 181 & 142 of B. M. Act. See notes to section 150 *ante*.

## VII—RULES.

Power to make rules as to taxation.

**163. The Local Government may make rules consistent with this Act—**

(a) prescribing the qualifications of, and the procedure to be followed by, an assessor of municipal taxes appointed under this Act;

(b) prescribing the form of notices under section 115, of notices of demand under section 123, sub-section (2), of warrants under section 125, sub-section (1), and returns of sales under section 127, sub-section (3);

(c) fixing the fees payable upon distraint under this Act; and

(d) regulating any other matter relating to taxes in respect of which this Act makes no provision or insufficient provision, and provision is in the opinion of the Local Government necessary.

## NOTES.

Sub-sections (a) & (b) are new. Sub-section (c) corresponds to sec. 121 and Schd. 4 of the B. M. Act and sub-section (d) is based on U. P. Act II of 1916 sec. 153 (f).

The section empowers the Local Government to frame rules consistent with the provisions of this Act relating to (1) the qualifications of the assessors appointed under sec. 118 or sec. 87 and the procedure to be followed by

them, (3) forms of notices, viz., demand notices, warrants and returns of sales, (4) the fees to be charged for distraint and (5) other matters which are not specially provided for in this Act or about which the provisions are insufficient and rules are considered necessary by the Local Government.

Forms of notices, warrants, etc., were under the Bengal Act prescribed by the schedules to the Act but under the present Act they are prescribed by rules framed by the Local Government the reason for the change is stated thus "this rule-making power obviates the necessity of fixing forms by Schedule which can only be altered by legislation." Notes on Clauses, para. 72.

The forms, etc., if they were prescribed by the Act then no changes which might be considered useful could be made in them except by legislation; but rules could be changed as often as required.

## CHAPTER V. ROADS AND BUILDINGS. ROADS.

"Clauses 165—174 (secs. 164 to 173) are taken mainly from the United Provinces Municipal Act, 1916, and the Bombay District Municipalities Act, 1911. The existing provisions of the Bengal Act relating to roads and road-side drains are inadequate for current municipal needs. The definition of "road" in the Act is unsatisfactory, as pointed out in the note on clause 3 (24). There are roads over which the public generally have not a right of way, but which some member of the public have a right to use, e.g., as a common means of access to a set of dwelling houses. The owner of the road has not a right to close it against such persons and the municipality ought to have control over the traffic. Under the existing law they have no such control, because the road is not a "road" for the purposes of the Act." Notes on Clauses, para. 73.

Notice of intention to layout or make a road. **164. (1) Before beginning to lay out or make a road, a person shall, if so required by any by-law, give notice in writing of his intention to do so to the Commissioners.**

**(2) Where a by-law has been made prescribing and requiring information and plans in addition to a notice, no notice under sub-section (1) shall be considered to be valid until the information and plans (if any) required by such by-law have been furnished to the satisfaction of the Commissioners.**

### NOTES.

The section is based on sec. 206 of U. P. Act II of 1916.



"Clauses 165 to 171 (secs. 164 to 170) deal with new private roads. It is very desirable that the Commissioners should have a power of control over the construction of new roads in private property both for the purposes of a general scheme of town-planning, and also for the gradual improvement of the plan of a town. It is left to the Commissioners to decide whether they will by by-law enforce the provisions of these clauses. If by-laws are made the Commissioners may sanction the road either absolutely or subject to their directions as to level, drainage, direction or width. Under clause 170 (sec. 169) they can alter an unsanctioned road and order the demolition of buildings erected on or along it. Clause 171 (sec. 170) empowers the Commissioners to require the levelling, drawing, cleansing, etc., of any private road for sanitary reasons." Notes on Clauses, para. 74.

This section gives the Commissioners power of control over the construction of new roads on private properties, both for the purpose of a general scheme of town-planning and also for the gradual improvement of the plan of a town. The Commissioners can enforce these provisions by framing by-laws under sec. 185 cl. (c) by which they may sanction the road either absolutely or subject to their directions as to level, drainage, direction or width. By the by-laws they can prescribe that before construction of a new road notice in writing should be given to the Commissioners as well as plans or informations regarding them. If plans and additional informations have to be submitted by the by-laws the notice under sub-section (1) shall not be valid until the plans, etc., are submitted to the Commissioners.

Postponement of  
work and demand for  
particulars.

**165. (1) Before passing an order on a notice submitted under section 164, the Commissioners may issue—**

**(a) an order directing that, for a period therein specified, which shall not be longer than one month from the date of such order, the intended work shall not be proceeded with, or**

**(b) an order requiring further particulars.**

**(2) A notice under section 164 shall not be deemed valid until the further particulars (if any) required by an order under clause (b) of sub-section (1) have been furnished to the satisfaction of the Commissioners.**

#### NOTES.

The section is based on sec. 204 of U. P. Act II of 1916.

The Commissioners if they intend to have the plans, etc., examined by their own experts must do so within the period fixed by clause (a) which shall not exceed one month from the date of the order prohibiting the con-

struction; the Commissioners may also require further particulars about the proposed construction and the notice filed will not be considered proper until all the required informations have been supplied to the Commissioners.

**Sanction of road by Commissioners.** **166. (1) The Commissioners may sanction the proposed road either absolutely or subject to such written directions as to level, means of drainage, direction and width, and as to the period within which the work is to be completed, as the Commissioners may deem fit to issue.**

**(2) Should the Commissioners neglect or omit for two months after the receipt of a valid notice under section 164 or, if an order has been issued under clause (a) of sub-section (1) of section 165, fail, within the period specified in such order, to make and deliver to the person who has given the notice an order of the nature specified in sub-section (1) in respect thereof, the Commissioners shall be deemed to have sanctioned the proposed road absolutely.**

**(3) Nothing in sub-section (2) shall be construed to authorize any person to act in contravention of any provisions of this Act or of any by-law.**

#### NOTES.

The section is based on sec. 205 of U. P. Act II of 1916.

The Commissioners may sanction the construction of the road either absolutely or subject to certain written directions as to level, drainage, direction and width and may also prescribe the time within which it is to be completed. If the Commissioners neglect or omit to pass an order refusing or sanctioning the road with or without conditions, within 2 months of the receipt of a valid notice or within the period prescribed in the order under sec. 165 (1) (a) postponing the construction, the sanction will be taken to have been granted absolutely, but this will not permit the applicant to violate the provisions of this Act, or of any by-law in force. See sections 164 (2) and 165 (1) (b) and 165 (2) as to when a notice is considered to be valid. A notice is valid only when the plans and informations under sec. 164 (2) and the further particulars if any required by sec. 165 (1) (b) are furnished.

An order under sec. 166 (1) is appellable under sec. 378. See notes to that section.

**Duration of sanction.** **167. (1) A sanction given or deemed to have been given by the Commissioners under section 166 shall be available for one year, or for such period as may be specified in any written direction given by the Commissioners under the said section.**

(2) After the expiry of the said period the proposed road may not be commenced except in pursuance of a further sanction applied for and granted under the foregoing section.

#### NOTES.

The section is based on sec. 206 of U. P. Act II of 1916.

Sanction for the construction of roads remain in force for one year unless the period for which it shall remain in force is specified in writing in the order granting the sanction; a fresh sanction will be necessary if the construction is not finished within the time.

**168.** Any person who begins, continues or completes the laying out of a road without giving the notice required by any by-law, or in contravention of any written directions made by the Commissioners under section 166, or of any provision of this Act, shall be liable to a fine not exceeding one hundred rupees.

#### NOTES.

The section is based on section 207 of U. P. Act II of 1916 and sec. 91 (4) of Bombay Act III of 1901.

The prosecution will be under section 175.

The last clause penalises actions contemplated by section 166 (8).

Power to alter unsanctioned road and demolish buildings thereon.

**169.** In any case where the Commissioners consider that any land is being or has been laid out as a road without the notice required by any by-law, or in contravention of any written direction made by the Commissioners under section 166, or of any provision of this Act, the Commissioners may, by a written notice, require the owner of the land to alter the road in such manner as they deem necessary, and the owner or occupier of any building, which is being or has been built on or along the road, to alter or demolish such building.

#### NOTES.

The section is based on sec. 208 of U. P. Act II of 1916 and sec. 91 of Bom. Act III of 1901.

The section empowers the Commissioners to require the owners to alter unsanctioned roads and to order alteration or demolition of buildings built or about to be built along them.

An order under this section is appealable under sec. 873, see notes to the section.

Power to require levelling, paving, etc., of a road.

**170. (1)** When the Commissioners consider that in a road, not being a public road, or in a part of such road within the municipality, it is for the public health, convenience or safety that any work should be for the levelling, paving, metalling, flagging, channelling, draining, or cleansing thereof, the Commissioners may by written notice require the owners of the land or buildings fronting, adjoining or abutting upon such road or part thereof, to carry out such work in a manner and within a time to be specified in such notice.

**(2)** If such notice is not complied with during the time specified, the Commissioners may, if they think fit, execute the work, and may recover the expenses incurred in doing so from the owners in default according to the frontage of their respective lands or buildings and in such proportion as may be decided by the Commissioners.

**(3)** The owner or owners of a road or a part of a road wherein any such work as is mentioned in sub-section (1) has been carried out, may require the Commissioners to declare the road a public road in accordance with the procedure prescribed by section 171.

Explanation:—A requisition by the owners of the greater portion of a road or a part of a road shall, for the purposes of this sub-section, be deemed to be a requisition of all such owners.

#### NOTES.

The section is based on section 212 of U. P. Act III of 1916 and sec. 90 (3) of Bombay Act III of 1901.

“ This section empowers the Commissioners to require the levelling, draining, cleansing, etc., of any private road for sanitary reasons.” Notes on Clauses, p. 74 quoted more fully in the notes to sec. 164. When considerations of public health, public convenience or public safety require it the Commissioners by written notice may require the owners of the land or buildings fronting, adjoining or abutting upon such private roads to make within a time fixed any works in regard to the levelling, paving, metalling, flagging (laying with stones), channelling, draining, lighting or cleansing of such roads.

Notice has to be served according to secs. 857 & 858 no time is fixed before which the notice is to be served and the work commenced but the notice must be reasonable in all cases.

**Sub-section (2):**—If the notice under sub-section (1) is not complied with the Commissioners may do the work themselves and recover the costs

from the defaulting owners according to the respective frontage of their lands or buildings abutting on such roads.

**Sub-section (3):**—If any of the works mentioned in subsection (1) is executed in any private road, then the owner of the entire road or a portion thereof can claim to have the road declared a “ public road ” according to sec. 171. The road will then vest in the municipality and it will have to make all improvements it thinks fit in it at its own cost. The claim to have the road declared ‘ public ’ might be made by the owners of either the greater portion or part of the road and that would be considered to be a requisition of all such owners.

Orders under this section are appellable under sec. 878. See notes to the section.

Adoption of a road  
as a public road.

**171. (1)** The Commissioners may, at any time, and shall, when required by requisition under sub-section (3) of section 170, by public notice posted up in a road which is not a public road, or in a part of such road, give intimation of their intention to declare the same a public road, and unless within two months next after such notice has been so posted up, the owner or owners of such road or such part of a road, or the greater portion thereof, lodges or lodge objections at the municipal office, the Commissioners may, by further public notice posted up in such road or such part, declare the same to be a public road.

**(2)** Any public notice required under sub-section (1) shall, in addition to being posted up in the road, be published in a local paper (if any) or in such other manner as the Commissioners think fit.

#### NOTES.

The section is based on sec. 221 of U. P. Act II of 1916 and sec. 90 (5) of Bombay Act III of 1901.

“ It is proposed that the Commissioners should be empowered, after giving notice of their intention to declare a road to be a public road. The owners of the road will be able to lodge objections, and if the majority of the owners object, the objection will prevail. The Clause will make it impossible for one or two recalcitrant owners of small portions to block a public improvement.” Notes on Clauses, p. 75.

The Commissioners may on their own motion and when required by a requisition under sec. 170 sub-sec. (8) shall, intimate their intention to declare a private road as a public road, by public notice posted up on such road or any portion of it and also publish in any other ways as the Commissioners

think fit as by publication in any local newspaper. If the owners of the road or a majority of them file objections to the same the objections will be considered and given effect to and the project will be given up; if no objections are made or even if only a minority of the owners of the road object the road will be declared to be a public road by a further public notice posted up in the same way on such road or portion thereof and also published in other ways as the first notice.

Power to construct,  
improve and provide  
for a public road.

**172. The Commissioners may—**

- (a) lay out and make a new public road and construct works subsidiary to the same,**
- (b) widen, lengthen, extend, enlarge or otherwise improve any existing public road if vested in the Commissioners,**
- (c) turn, divert, discontinue or close any public road so vested,**
- (d) provide within their discretion building sites of such dimensions as they think fit to abut on or adjoin any public road made, widened, lengthened, extended, enlarged or improved by the Commissioners under clauses (a) or (b) or by the Local Government,**
- (e) subject to the provisions of any rule prescribing the conditions on which property may be acquired by the Commissioners, acquire any land, along with the buildings thereon, which they consider necessary for the purpose of any scheme or work undertaken or projected in exercise of the powers conferred by the preceding clauses, and**
- (f) subject to the provisions of any rule prescribing the conditions on which property vested in the Commissioners may be transferred, lease, sell or otherwise dispose of any property acquired by the Commissioners under clause (e) or any buildings erected thereon or any land used by the Commissioners for a public road, and in doing so impose any condition as to the removal of any building existing thereon, as to the description of any new building to be erected thereon, as to the period within which such new building shall be completed, and as to any other matter that they may deem fit.**

**NOTES.**

The section corresponds to section 219 of U. P. Act and sec. 90 (1) of Bombay Act III of 1901.

" This section deals with public roads. The Bengal Act gives power to lay out and make new public roads, and to widen, lengthen, extend or otherwise enlarge roads. By this clause power will be given to turn, divert, discontinue or close a public road and to provide building sites to abut on or adjoin any public road made, widened, lengthened, extended, enlarged or improved. The Commissioners will also be able, subject to rule, to acquire land and the buildings thereon, for the purpose of road improvement and the provision of building sites, and to lease or sell the land so acquired subject to conditions as to the buildings to be erected thereon. There is no doubt that the provisions of this clause will go a long way towards enabling the Commissioners to improve the planning of the municipality." Notes on Clauses, p. 76.

Power to regulate line of buildings on public roads.

**173. (1) Whenever the Commissioners consider it expedient to define the general line of buildings on each or either side of any existing or proposed public road, they shall give public notice of their intention to do so.**

**(2) Every such notice shall specify a period within which objections will be received.**

**(3) The Commissioners shall consider all objections received within the specified period and may then pass a resolution defining the said line, and the line so defined shall be called "the regular line of the road."**

**(4) Thereafter it shall not be lawful for any person to erect, re-erect, or alter a building or part of a building so as to project beyond the regular line of the road, unless he is authorized to do so by a sanction granted under section 188 or by a permission in writing (and the Commissioners are hereby empowered to grant such permission) under this section.**

**(5) Any owner of land who is prevented by the provisions of this section from erecting, re-erecting, or altering any building on any land may require the Commissioners to make compensation for any damage which he may sustain by reason of such prevention, and upon the payment of compensation in respect of any land situated within the regular line of the road, such land shall vest in the Commissioners.**

**(6) The Commissioners may, by notice, require the alteration or demolition of any building or part of a building erected, re-erected, or altered in contravention of sub-section (4).**

#### NOTES.

The section is based on section 222 of U. P. Act II of 1918.

" These clauses will give the Commissioners the important power to define the general line of buildings along public roads and to remove buildings projecting beyond the line which have been erected since the line was defined. Compensation will be payable for damage done to the owners of land over which they are prevented from building, and if it is paid the land will vest in the Commissioners. The provisions of sections 206 and 241 of the Bengal Act are practically useless for " the regular line of the road " is not defined in the Act, nor are the Commissioners empowered to define it while the power to make by-laws regulating the line of frontage with neighbouring houses must be useless for such road is a special case and it is impossible to legislate for a collection of special cases." Notes on Clauses, p. 77.

The Commissioners if they think fit can under this section fix the regular line of buildings on any existing or proposed public road. In order to do so, they are at first to give public notice of their intention to do so and fix a period within which objections if any may be filed and after consideration of all such objections, they may if they think proper, at a meeting by a resolution fix the line of buildings in the road and the line so fixed is called " the regular line of the road."

A ruling on a similar section of the Bombay Municipal Act may be usefully referred to in this connection.

Sec. 297 of the City of Bombay Municipal Act does not lay down the mere regulation of a street or the erection and preservation of a regular line in it as the definite and sole object for which the power of acquisition conferred on the Commissioner by that section and sec. 299 is to be exercised, nor does the Act authorise any investigation as to his motives or invalidate his action on account of the purpose with which he prescribes the regular line of a street under section 297. *Abdul Rahim Mahomed Narma vrs. Municipal Commissioners for Bombay*, 28, C.W.N. 110 (P.C.)

**Sub-section (4):**—After " the regular line of the road " is once fixed no person is allowed to build, re-erect or alter any building so as to project any portion of it beyond the line, without an order under section 188 or a written permission of the Commissioners to that effect.

**Sub-section (5):**—Compensation has to be paid to the owner for any damage caused to him on account of his being prevented from erecting, re-erecting or altering any building on any land beyond the line of buildings of the road. After the payment of compensation the land vests in the Commissioners.

The expression " any damage he may sustain " is intended to ensure compensation to the owner for every sort of damage, and not to restrict it to



compensation for such damage as he may by his own arrangements contrive to reduce it to. The Municipal Commissioners for the City of Bombay *vs.* Patel Haji Mahomed Ahmed, Janu, 14 Bom. 202. See also the meaning of "direct damage" in sec. 174.

**Sub-section (8):**—Orders passed under this section are appellable under sec. 87B.

Setting back of houses projecting beyond the regular line of road or drain, when taken down.

**174. (1)** Whenever any house, part of which projects beyond the regular line of a road, or beyond the front of the house on either side thereof, is burnt down or otherwise destroyed, or is taken down in order to be rebuilt or repaired, the Commissioners may require the same to be set back to, or beyond, the line of the road or drain, or the line of the adjoining house, and shall pay reasonable compensation to the owner of such house, if any direct damage is thereby sustained.

**(2)** Any owner or occupier of a house who fails to comply with a requisition issued by the Commissioners under sub-section (1) shall be liable to a fine not exceeding fifty rupees and to a further fine not exceeding ten rupees for every day during which the default is continued after the expiration of eight days from the date of service on him of such requisition.

**Explanation.**—The expression "direct damage" as used in sub-sec. (1) with reference to land, means the loss to the owner or occupier equivalent to the market value of the land of which he has been deprived and the depreciation, if any, in the ordinary market value of the rest of the land resulting from the area being reduced in size; but does not include damage due to the prospective loss of any particular use to which the owner may allege that he intended to put the land, although such use may be injuriously affected by the reduction of the area of the site.

#### NOTES.

Sub-section (1) corresponds to section 206 and sub-section (2) corresponds to sec. 218 of B. M. Act; the explanation is new.

See notes on Clause, para. 77 quoted in the notes to section 173.

After "the regular line of the road" is once fixed under section 173 if any house any part of which projects beyond the line is burnt down, destroyed or is taken down in order to be rebuilt or repaired the Commissioners may require the house to be set back, to or beyond the line of the road or drain or the line of the adjoining house, but in such cases they have to pay compensation for any direct damage sustained by the owner.

**Direct damage:**—see notes to Explanation.

**Sub-section (2):**—The requisition under sub-section (1) will be made under section 359 and prosecution for failure to comply with it will be under sec. 375 read with this sub-section.

If any person fails to comply with the notice under sub-section (1) and without the permission of the municipality begins to erect or re-erect any building beyond the "regular line of the road" he would be punishable under sec. 192. Within fifteen days from the date on which information of the unauthorised erection, etc., i.e., the commission of an offence under sec. 192, is received by the Commissioners they can by written notice stop the erection, re-erection, alteration, etc., and they can within the same period of fifteen days of the receipt of the information direct any demolition or alteration of such unauthorised construction (sec. 198). But no action under sec. 198 can be taken more than 15 days after such erection, re-erection, etc., has been completed. See notes to secs. 192, 198 in this connection and *Ramdhani Lal vs. The Chairman of Patna Municipality*, 1 Pat. 42 (I.L.R.)

**Daily fine:**—as to the procedure for inflicting daily fine, see notes to section 108.

There must be a separate prosecution for the continued offence, a charge must be laid of a specific contravention for a specific number of days and the Magistrate must impose a daily fine. It is illegal for a Magistrate when convicting a person of the primary offence to impose a fine in anticipation for every day during which the offence may be continued after the conviction, for the imposing of a daily fine prospectively is illegal in as much as it is an adjudication in respect of an offence which has not been committed when such order is passed.

See in this connection the case of *Pancham Sao vs. King-Emperor*, 6, P.L.T. 204.

**Direct damage:**—with reference to land means loss to the extent of the market value of the land of which the owner is deprived together with the depreciation if any in the market value of the rest of the land due to the diminution in area; but does not include any loss due to the incapability of the land being put to such profitable use as the owner might have contemplated.

Sub-section (5) of sec. 173 may also be referred to in this connection for the meaning of the phrase "any damage which he may sustain" which is intended to ensure compensation to the owner for every sort of damage and not to restrict it to compensation for such damage as he may by his own arrangements contrive to reduce it to. *The Municipal Commissioners for the City of Bombay vs. Patel Haji Mahomed Ahmed Janu*, 14 Bom. 292.

Duties of Commissioners when constructing public roads, etc.

**175. (1)** The Commissioners shall, during the construction or repair of a public road or of any waterworks, drains or premises vested in them, or whenever any public road, waterworks, drain or premises vested in them has or have, for want of repairs or otherwise become unsafe for use by the public, take all necessary precautions against accident by—

- (a) shoring up and protecting adjacent buildings,
- (b) fixing bars, chains or posts across or in any road for the purpose of preventing or diverting traffic during such construction or repair, and
- (c) guarding and providing with sufficient lighting from sunset to sunrise any work in progress.

**(2)** Any person who without the authority or consent of the Commissioners in any way interferes with any arrangement or construction made by the Commissioners under sub-section (1) for guarding against accident shall be liable to a fine not exceeding fifty rupees.

#### NOTES.

The section is based on sec. 228 of U. P. Act II of 1916.

The Commissioners must take proper precautions to guard against accident during the construction or repairs of public roads, waterworks, drains or any premises vested in them and also whenever any public road, waterworks, etc., become unsafe for use by the public.

The Commissioners of the Town of Calcutta permitted the Executive Engineer of the P. W. D. to open one of the roads in Calcutta for the purpose of carrying off surplus water from a tank which was under the charge and control of the Executive Engineer for the purpose of connecting the tank with the public sewer. Permission was granted on the usual condition that a contractor licensed to do such works by the municipality should be employed in the work. Such a contractor was employed by the Secretary of State and obtained a license from the Commissioners empowering him to break open the road. The road was opened but was left unfenced and insufficiently lighted at night, the plaintiff in driving along this road after dusk drove into the hole and was badly injured and sued the Corporation, the Contractor and the Secretary of State for damages, it was held that both the Corporation and the contractor were liable, and the fact that the Commissioners gave permission to another person to open up a road although for a perfectly proper purpose would not relieve them from their statutory duty. *The Corporation of Calcutta vs. Anderson*, 10 Cal. 445.

**Sub-section (2):**—Any interference with the arrangements or constructions made by the Commissioners for guarding against accident is penalised by this sub-section.

Prosecutions will be under sec. 875.

Hoids to be set up during repairs. **176. (1)** Every person intending to build or take down any house, or to alter or repair the outward part of any house, shall, if any public road will be obstructed or rendered inconvenient by means of such work, and if so required by the Commissioners by notice, before beginning the same, cause sufficient hoards or fences to be put up in order to separate the house, where such works are being carried on, from the road, and shall keep such hoard or fence standing and in good condition, to the satisfaction of the Commissioners, during such time as the public safety or convenience requires, and shall cause the same to be sufficiently lighted during the night:

Provided that no person shall put up a hoard or fence without the written permission of the Commissioners, nor shall he keep up the said hoard or fence for a time longer than allowed in the said written permission which shall not exceed two months.

**(2)** Any person who contravenes the provisions of sub-section (1) or who, without written permission, erects or sets up any hoard, scaffolding or fence whatsoever, or who, being permitted, fails to put up such fence or hoard or to continue the same standing, or to maintain the same in good condition, or who does not, while such hoard or fence is standing, keep the same sufficiently lighted during the night, or who does not remove the same within eight days when directed by the Commissioners, shall be liable to a fine not exceeding fifty rupees, and to a further fine not exceeding ten rupees for every day during which the offence is continued after he has been convicted of such offence.

#### NOTES.

Sub-section (1) corresponds to sec. 235 and sub-section (2) corresponds to sec. 273 (1) of B. M. Act.

Whenever on account of the construction of any building or pulling down, altering or repairing any house any public road is sure to be obstructed or rendered inconvenient for traffic, the person before beginning the same shall apply for permission to put up a hoard or fence surrounding the proposed construction and obtain a written permission for the same from the Commissioners and shall put up the hoard or fence separating the works from the

road and shall keep it in proper order and sufficiently lighted during the night.

The hoard or fence is not to be kept for more than two months. If a person has not obtained the permission for erecting the hoard or fence and has not put any, thinking that the construction will not obstruct the road or inconvenience the public, the Commissioners if they apprehend danger or inconvenience to the public may require him to provide sufficient hoard or fence round the works during the period of construction and keep them in proper order and lighted during the night.

**Sub-section (2):**—Any contravention of the provisions of sub-sec. (1) or its proviso or the failure to erect the hoard or fence after obtaining the necessary permission or maintain it in proper condition or lighted during the night is made punishable by this sub-section.

**Daily fine:**—For the procedure how the daily fine is to be inflicted see notes to sec. 108.

Leave to deposit materials on, or to excavate or close a road.

**177. The Commissioners may grant permission to any person, for such period not exceeding two months as they may think fit, to deposit any moveable property on any public road, or to make an excavation in any public road, or to enclose the whole or any part of any road, and may charge such fees as they may fix for such permission:**

**Provided that such person undertakes to make due provision for the passage of the public and to erect sufficient fences to protect the public from injury, danger or annoyance, and to light such fences from sunset to sunrise sufficiently for such purpose.**

#### NOTES.

The section corresponds to sec. 284 of B. M. Act.

Permission to deposit building materials on a road, to excavate it or enclose it can be given under this section but such permission can only be granted for a temporary purpose and for a period not exceeding two months and on receipt of such fees as the Commissioners might have fixed for the purpose in order to compensate itself for the damage caused to the road by the temporary use of it by a person.

Digging or cutting up a public road without the Commissioners' permission is punishable under sec. 182 of this Act and depositing building materials on a public road without the Commissioners' written permission is punishable under sec. 176 (2) and the bye-laws framed under sec. 185.

Section 284 of the Municipal Act is a section of emergency referring to deposit of movable property such as bricks, etc., for the construction of a house. Under this section the municipality is not entitled to lease out its right for the purpose of carrying on shops or exposing goods for sale thereon. *Dhummun Chodhury vrs. K. E.*, 3 P.L.T. 389=1922, Pat. 286 (A.I.R.).

Power to close a road or part of a road for repairs or other public purpose.

**178. The Commissioners may close, for a period not exceeding one month, any road or part of a road for the purpose of repairing such road, or for the purpose of constructing any drain, ouivert or bridge, or for any other public purpose :**

**Provided that the Commissioners so closing any road shall be bound to provide reasonable means of access for persons occupying holdings adjacent to such road.**

#### NOTES.

The section corresponds to sec. 201 of B. M. Act.

Public roads may be closed for a short period for the purpose of repair or for construction of drains, etc., but in doing so the Commissioners must provide means of access to the occupants of the adjacent holdings.

The Commissioners can close a road temporarily but cannot stop up or divert any public highways. *Jodoonath vrs. Brojanath*, 2 Cal. 425. "Any other public purpose" is equivalent to "any of the purposes of the Act." What those purposes are is explained in sec. 68.

Sanction of Commissioners to projections over roads and drains.

**179. (1) Subject to any rules made by the Local Government prescribing the conditions for the sanction by Commissioners of projections over roads or drains, the Commissioners may give written permission, where provision is made by a by-law for the giving of such permission, to the owners or occupiers of buildings in or on roads to erect or re-erect open verandahs, balconies or rooms, to project over a road or a drain in a road from any upper storey thereof, at such height from the surface of the road, and to such an extent beyond the line of the plinth or basement wall, as are specified in such by-law.**

**(2) In giving permission, under sub-section (1) the Commissioners may prescribe the extent to which and the conditions under which, any roofs, eaves, weather-boards, shop-boards and the like may be allowed to project over such roads.**

## NOTES.

The section is based on sec. 209 of U. P. Act II of 1916.

" These clauses (sec. 179 & 180) are inserted with a view to check the encroachments which the owners and occupiers of houses adjacent to municipal roads make on the roadside drains by erecting thereon platforms and other structures. The tendency to build on such platforms and structures has been a source of constant trouble to those responsible for municipal administration. The process of encroachment is a gradual one and very difficult to check; but it goes on continuously, and in some cases the drains have been closed in so completely that they can no longer be cleaned. It is now proposed that as a deterrent the Commissioners should be empowered to levy a small license fee for platforms." Notes on Clauses, p. 78.

Sec. 185 (d) empowers the Commissioners to frame by-laws consistent with this Act to regulate the conditions on which permission can be given for projections over roads and drains; when such by-laws are framed in accordance with the conditions prescribed by rules framed by the Local Government on the matter, the Commissioners may grant written permission regarding the height from which projections will be allowed and the extent to which it may extend on to the road, and as to roofs, eaves, weather-boards and shop-boards further prescribe the conditions under which the projections will be allowed.

Erection of platforms. **180. (1) No platform shall be erected, re-erected or extended upon or over any public road or drain without the previous sanction of the Commissioners.**

**(2) The owner of every platform, except platforms which are used for giving such access to the houses as the Commissioners may consider necessary, shall, if the Commissioners at a meeting so direct, take out a licence for keeping the platform.**

**(3) Every such licence shall remain in force for one year and shall be renewable annually.**

**(4) For every such licence there shall be paid a fee to be fixed by the Commissioners at a rate of not less than two annas nor more than eight annas for each square foot of the superficial area of the platform except such portion thereof as is used for giving such access to a house as the Commissioners may consider necessary.**

**(5) Any person who contravenes any of the provisions of this section shall be liable to a fine not exceeding fifty rupees.**

## NOTES.

The section is new and there is no corresponding section in the B. M. Act.

In this connection see the Notes on Clauses, para. 78 quoted in the notes to sec. 179.

This section prohibits the erection, re-erection or extension of platforms over roads or drains except with the previous sanction of the Commissioners and on taking out of a license for the purpose and on payment of such fees as might have been fixed by the Commissioners at a meeting; but no license fees have to be paid for platforms which are merely means of access to a house and which the Commissioners consider necessary for the purpose.

**Erect:**—The word "erect" is never used except with some idea of permanence attached to it. Murray's Dictionary Vol. 1, page 268. *Kamta Nath vs. The Municipal Board of Allahabad*, 28 All. 190, at page 202

See also the case of *Emperor vs. Muhammad Yusuf* in 39 All. 386 which was decided on a similar provision (sec. 209) of the U. P. Municipal Act (II of 1916) in which it was held that the placing without the permission of the Municipal Board of movable planks over a municipal drain outside a shop, the planks being put out in the morning when the shop was opened and removed at night did not amount to an offence under the United Provinces Municipal Act 1916. The expressions used in sec. 209 of that Act indicate that it refers to something of a permanent nature.

**Sub-sec. (4):**—The fees for granting licenses for platforms may be fixed by the Commissioners at any sum from two annas to eight annas for every square foot of the superficial area of the platform excluding such area as is required for giving access to a house and is deemed necessary for the purpose.

**Sub-sec. (5):**—Penalty for failure to pay the fee and take out license for platforms is punishable under this sub-section.

Removal of fallen house etc. obstructing road or drain.

**181. (1)** Whenever any private house, wall or other erection, or any tree, falls down and obstructs or encumbers any public road or drain, the Commissioners may remove such obstruction or encumbrance at the expense of the owner of the same, or may require him to remove the same within such time as to the Commissioners may seem fit.

**(2)** Any person who fails to comply with a requisition issued by the Commissioners under sub-section (1) shall be liable to a fine not exceeding fifty rupees, and to a further fine not exceeding ten rupees for every



day during which the default is continued after the expiration of eight days from the date of service on him of such requisition.

#### NOTES.

The section corresponds to section 207 of B. M. Act.

The Commissioners can under this section remove the obstructions themselves and realise the cost under section 368; or they may make a requisition under section 359 calling on the owner to remove them within eight days.

Sub-sec. (2) prescribes the penalty for failure to comply with the requisition under sub-section (1). The prosecution will be under section 375 of the Act.

For the procedure for inflicting daily fine during the period of default see notes to sec. 108 (1) *ante*.

Penalty for cutting road, **182. Any person who, in order to provide for the passage of water or for any other purpose, without the consent of the Commissioners, digs or cuts up any public road shall be liable to a fine not exceeding twenty-five rupees, and shall in addition be bound to pay the expenses incurred in filling up any excavation made by him or on his behalf in any such public road.**

#### NOTES.

The section corresponds to section 269 of B. M. Act.

Interference with public roads without the permission of the Commissioners under section 177 is made punishable under this section. The costs will be realised by the Magistrate along with the fine and the amount credited to the municipal fund. See notes to sec. 65 *ante*.

Regulation of troughs and rain water pipes affecting a road, **183. The Commissioners may by notice require the owner or occupier of any building or land abutting on a road to put up and keep in good condition proper troughs and pipes for receiving and carrying off the water from the building or land, and for discharging the same in such manner as the Commissioners may think fit, so as not to cause a nuisance or to inconvenience persons passing along the road.**

#### NOTES.

The section is based on section 216 of U. P. Act II of 1916.

The section empowers the Commissioners to regulate the rainwater pipes and troughs of houses standing on road sides.

The Commissioners can issue a requisition under sec. 850 for any of the purposes mentioned in this section and if that is not complied with they may complete the work themselves and realise the cost under sec. 868.

**184. (1) The Commissioners at a meeting may cause a name to be given to any road and to be affixed in such place as they may think fit, and may also cause a number to be affixed to every house; and in like manner may, from time to time, cause such names and numbers to be altered.**

**(2) Any person who destroys, pulls down, defaces or alters any name or number put up by the Commissioners under the authority of sub-section (1) shall be liable to a fine not exceeding twenty rupees.**

**NOTES.**

Sub-section (1) corresponds to section 215 and sub-sec. (2) corresponds to sec. 216 (2) of B. M. Act.

This section provides that the Commissioners at a meeting may put names on roads and numbers to houses standing thereon and penalises the destruction, removal or defacement of the tickets put by the Commissioners.

The prosecution will be according to section 375.

**185. The Commissioners at a meeting may make by-laws consistent with this Act—**

- (a) to regulate or prohibit any description of traffic on roads, and to prevent obstructions, encroachments, excavations and nuisances on or near roads,**
- (b) to prevent, prohibit or regulate the use or occupation of any or all public roads or places by any person for the sale of articles or for the exercise of any calling or for setting up any booth or stall, and to provide for the levy of fees for such use or occupation.**
- (c) to determine the information and plans to be furnished to the Commissioners under section 184, and**
- (d) to regulate the conditions on which permission may be given under section 179 for projections over roads and drains.**

**NOTES.**

Sub-section (a) corresponds to sec. 350 of B. M. Act; sub-secs. (b), (c) & (d) are based on secs. 209 E (b), (a) & (e) of U. P. Act II of 1916.

"The Bill provides a wider power to make by-laws for the regulation of roads than does the present Act." Notes on Clauses, p. 79.

The Commissioners are empowered to frame by-laws and they are to follow the procedure prescribed by sec. 854 to give legal validity to them. The by-laws are local laws supplementary to the general laws and intended to further the administration of the municipality according to its special circumstances. The power to frame by-laws includes the power exerciseable in the like manner and subject to the like sanction and conditions (if any) to add to, amend, vary or rescind any by-laws so made. Bihar and Orissa General Clauses Act [Act I of 1917 (B & O)] sec. 24.

The by-laws are framed after previous publication in the manner provided by sec. 26 of B & O General Clauses Act, which runs as follows:—

- (1) the authority having power to make the rules or by-laws shall before making them publish a draft of the proposed rules or by-laws for the information of persons likely to be affected thereby;
- (2) the publication shall be made in such manner as that authority deems to be sufficient or if the condition with respect to previous publication so requires in such manner as the Local Government prescribes;
- (3) there shall be published with the draft a notice specifying a date on or after which the draft will be taken into consideration;
- (4) the authority having power to make rules or by-laws and, where the rules or by-laws are to be made with the sanction, approval or concurrence of another authority, that authority also shall consider any objection or suggestion which may be received by the authority having power to make rules or by-laws from any person with respect to the draft before the date so specified;
- (5) the publication in the Gazette of a rule or by-law purporting to have been made in exercise of a power to make rules or by-laws after previous publication shall be conclusive proof that the rule or by-law has been duly made.

**Consistent with this Act:—**The section specifies the matters on which the Commissioners may make by-laws, *viz.*, those mentioned in cls. (a) to (d). They have no power to deal with anything outside or beyond those matters, for the Legislature grants no more than what passes by necessary and unavoidable construction; and the mere *bona-fide* belief that an order might be desirable will not render it legal if the body issuing it has no power to make it. So long as the Commissioners keep within these limits, they

have full power to frame by-laws subject to the condition that the rules are consistent with the aim, scope and object of the Act.

By-laws are inconsistent with the Act only if they alter and thereby contradict the Act. *Tribhovan vrs. Ahmedabad Municipality*, 27 Bom. 221.

" A bye-law is a local law and may be supplementary to the general law it is not bad because it deals with something that is not dealt with by the general law. But it must not alter the general law by making that lawful which the general law makes unlawful " (per Channel, J. in *White vrs. Morley*, p. 89) cited in 27 Bom. at p. 256.

By-laws must not only be not inconsistent with the provisions of the Act, but they must also be reasonable. " The question what is a reasonable exercise of such power must depend upon the character of the body acting on the delegated authority of the Legislature upon the subject matter of such legislation and the nature and extent of the authority given to deal with matters which concern it. As observed by Lord Russel of Killowen C. J. in *Kruse vrs. Johnson*, 2 Q.B. 91 if the by-law of a public representative body were found to be partial and unequal in their operation as between different classes; if they were manifestly unjust; if they disclosed bad faith, if they involved such oppressive or gratuitous interference with the rights of those subject to them as could find no justification in the minds of reasonable men, then a Court might well say: ' Parliament never intended to give authority to make such rules: they are unreasonable and *ultra vires*.' But it is in this sense and in this sense only as I conceive, that the question of unreasonableness can properly be regarded. A by-law is not unreasonable merely because particular Judges may think that it goes further than is prudent or necessary or convenient, or because it is not accompanied by any qualification or an exception which some judges may think ought to be there. Surely it is not too much to say that in matters which directly and mainly concern the people of the country who have the right to choose those whom they think best fitted to represent them in their Local Government bodies, such representatives may be trusted to understand their own requirements better than Judges." 27 Bom. 221, at page 249.

The English law as to the necessity of by-laws being reasonable is applicable to bye-laws framed in the exercise of their statutory power by Municipal Boards in India. The Municipal Board of Naini Tal passed a bye-law to the effect. " No coolies whether bearing loads or not, no servant except in attendance on his master and no prostitute shall use the Upper North Mall at any time," held that as regards the words " no servant except in attendance on his master " this was under the circumstances an unreasonable by-law and the Court declined to give effect to it. *Emperor vrs. Balkishen*, 24 All. 439.

A by-law must conform to the provisions of the law under which it purports to be made. *Narain vrs. Corporation of Calcutta*, 87 Cal. 545=10, C.L.J. 628=14, C.W.N. 614.

**Previous by-laws:**—By-laws framed under the previous Municipal Act are valid as if made under this Act if they had been lawfully prescribed under those Acts and are not inconsistent with this Act, but not otherwise. See notes to sec. 391 and sec. 27 of B & O General Clauses Act which runs thus "When any enactment is repealed and re-enacted by a Bihar and Orissa Act with or without modification then unless it is otherwise expressly provided any by-law made under the repealed enactment shall so far as it is not inconsistent with the provisions re-enacted continue in force and be deemed to have been made under the provisions so re-enacted unless and until it is superseded by any by-law made under the provisions so re-enacted."

**Construction of by-laws:**—The language of the by-laws should agree with the language of the Act; expressions used in the by-law shall unless there is anything repugnant in the subject or context have the same respective meanings as in the Act conferring the power. Sec. 23 of B & O General Clauses Act I of 1917. When any by-law made after the commencement of B & O Act I of 1917 continues or amends any by-laws made before the commencement of this Act the foregoing sections of this Act shall not by reason merely of such continuance or amendment affect the construction of such by-laws. Sec. 38 of B & O Act I of 1917.

#### BUILDINGS.

"Clauses 187 to 195 (secs. 186 to 193) deal with the erection of new buildings and the re-erection and alteration of buildings. The Notes on Clause 8 (1) [sec. 8 (1)] may be referred to. The main regulations of the building will be left to by-laws under clause 197 which enables the Local Government, if it thinks necessary, to require such by-laws to be made by the Commissioners. The scope of the by-laws has been considerably enlarged, since it has been found impossible under section 241 of the Bengal Act to make any of the regulations which modern sanitation requires. The power to prescribe the type or description of buildings which may or may not, and the purposes for which a building may or may not, be erected in any specified area will be important in view to improvement in town planning."

"The provisions as to notice and sanction in the case of new buildings and alterations follow closely those in force in the United Provinces, and do not greatly differ from those in the Bengal Act. The United Provinces Act requires notice in case of buildings abutting on or adjacent to a public street or place or any Municipal or Government property,

and in other cases only if required by by-law. Unless there are "building by-laws" the procedure of giving notice seems idle. If there are by-laws the cases in which notice is required can be specified in them. Under this Bill unless by-laws have been framed the other provisions will not apply. Instead of defining "erection" and "re-erection" so as to include material alterations the word "alter" is used, and "material alteration" is defined. The Commissioners in giving sanction will not be limited to giving directions in accordance with the by-laws, but if the direction goes beyond the by-laws they will in general be liable to pay compensation." Notes on Clauses, p. 80.

Notice of intention to erect building or make well.

**196. (1) A person shall give notice to the Commissioners before beginning, within the limits of the municipality,—**

- (a) to erect a new building or new part of a building, or
- (b) to re-erect, or make a material alteration in a building, or
- (c) to make or enlarge a well.

(2) The Commissioners may by a by-law exempt any class of buildings or wells within the whole or any part of the municipality from the provisions of sub-section (1).

(3) An alteration in a building shall, for the purposes of this Chapter and of any by-law, be deemed to be material if it—

- (a) affects or is likely to effect prejudicially the stability or safety of the building or the condition of the building in respect of drainage, ventilation, sanitation or hygiene, or
- (b) increases or diminishes the height, or area covered by, or cubical capacity of, the building or reduces the cubical capacity of any room in the building below the minimum prescribed in any by-law, or
- (c) converts into a place for human habitation a building or part of a building originally constructed for other purposes, or
- (d) is an alteration declared by a by-law made in this behalf to be a material alteration.

#### NOTES.

Sub-sec. (1) (a) corresponds to sec. 178 of U. P. Act II of 1916 and (b) corresponds to sec. 287 of B. M. Act Sub-sec. (3) (a) corresponds to sec. 240 of B. M. Act.

This section provides the Commissioners with an elastic method of regulating the construction of new buildings in the municipality, in order to prevent the mischief that would arise from their construction without proper regard to public health, traffic and sanitation.

The intending builder before beginning must give the Commissioners notice of his intention to erect a new building or new part of a building or to re-erect or to make a material alteration in a building. If any by-laws have been framed under sec. 195 which requires that along with the notice of one's intention to build any informations and plans should be given the notice will not be valid until the informations and plans are furnished to the satisfaction of the Commissioners. Even if any by-laws have not been framed under section 195 the Commissioners may within 15 days of the receipt of the notice under sec. 186 (1) require the person to furnish a plan and specification of any existing or proposed building, together with a site plan of the land, with such reasonable details as the Commissioners require; and in such case the notice shall not be considered to be valid until the plans and specifications have been furnished to the satisfaction of the Commissioners. After complying with the requisitions of the Commissioners the person should wait till they pass orders on his proposal or the one month's time expires. A notice has also to be given to the Commissioners in cases of making or enlarging wells. But the Commissioners may by framing by-laws exempt any class of the buildings or wells within the whole or any part of the municipality from the provisions of sub-sec. (1) and then no notice will be necessary for such constructions.

If a person after giving notice in writing of his intention to erect a house under sec. 237 of the B. M. Act commences to build without waiting for the six weeks mentioned therein [as he is not bound to do under the Act there being no such provision in it] he does not necessarily contravene the law. But if he so acts, the reasonable view must be that he does it at his own risk, his act being liable to be treated as one in contravention of any legal order of the Commissioners issued within the statutory period of six weeks (the period fixed by the Bengal Act) if such order does not sanction the proposed building. As he commences to build in anticipation of sanction his act is valid if the sanction is obtained; but if sanction is refused within the statutory period the act from its commencement must be held to have been in contravention of the order of the Commissioners though issued subsequently within the statutory period. Chundra Kumar Dey *vs.* Gonesh Das Agarwalla, 25 Cal. 419.

Primarily the responsibility rests on the applicant to draw the Commissioners attention to all the necessary facts connected with the position and

surroundings of the proposed house: but a responsibility also attaches to them to ascertain those facts and circumstances before granting sanction. *Noni Lal Sett vs. Corporation of Calcutta*, 7 C.W.N. 858.

Sub-section (1) (a):—See in this connection the definition of “ building ” in sec. 8 (1).

**New part of building:**—See the cases cited below.

The building of a new wall on the site of the old wall including the old foundations was held not to be an addition to the existing building within the meaning of sec. 33 of the District Municipalities Act (Bom. Act VI of 1878) *Krishnaji Pokshe vs. The Municipality of Tasgon*, 18 Bom. 547.

See also *Emperor vs. De Souza*, 35 Bom. 412 where it was held that the reconstruction of a small side wall on the old boundary was not a new building.

If the wall is a new one or if it is a compound wall then it would come within clause 1 (a) as a “ new part of a building ” and would require sanction, if an old wall falls down and on the very site a new wall of the same height as the old one is erected, this will also require sanction as a “ new part of a building ” under the present definition.

See also in this connection the case of *Basanta Kumar Bose vs. Chairman of the Municipal Commissioners of Giridih*, 1 Pat. 44 (I.L.R.) in which it has been held that the municipality has no power to frame a by-law under sec. 241 relating to the erection of a boundary wall apart from its erection as part of a scheme for building or re-building the house itself.

Walls which increase or diminish the height of buildings come under this clause and require sanction for their construction. For “ walls ” see notes to sec. 195 cl. (e) (f).

The building of a new and additional masonry wall which materially enlarges a court yard constitutes the erecting of a house within the meaning of secs. 238 & 240 of the B. M. Act and its erection without the sanction of the Municipal Commissioners is an offence under section 273 sub-section (1) of the Act. The word “ building ” in the absence of any specific definition in the Act should be construed in its ordinary sense and as including erections, structures or buildings such as masonry walls. *Mohabir Das vs. Gaya Municipality*, 26 I.C. 651.

**Clause (b):**—The erection of a verandah is in erection of a building within the meaning of sec. 237 of B. M. Act. A municipality which has not framed any by-law under sec. 241 of B. M. Act is not competent to insert reservations in a sanction to build but must either refuse the sanction or



grant it without reservation. *Brijbehari Lal vrs. Chairman, Daltongunj Municipality*, 1 Pat. 26 (I.L.R.)=1921 Pat. Sup. 847=68, I.C. 353.

In a certain case the question for decision was whether a by-law passed by a municipality under sec. 241 of B. M. Act forbidding the erection of a boundary wall within five feet from the road without sanction was *ultra vires* the municipality, held, that where a house is being built for the first time, or is being re-built, and it is proposed also to erect a boundary wall, then the boundary wall being part of the scheme for the house falls within section 237, and, therefore within sec. 241, but when a house in neither being built nor re-built, the erection of a boundary wall does not fall within the scope of section 237, and, therefore the municipality had no power to frame a by-law under section 241 relating to the erection of a boundary wall apart from its erection as part of a scheme for building or re-building. *Basanta Kumar Bose vrs. Chairman of the Municipal Commissioners, Giridih*, 1 Pat. 44 (I.L.R.)=68 I.C. 290=1921 Pat. Sup. 349.

A boundary or compound wall was not a building within the meaning of sec. 151 cl. (b) of the Calcutta Municipal Act. *Corporation of Calcutta vrs. Benoy Krishna Bose*, 12 C.L.J. 476=7 I.C. 890. But under the present section it would come within "new part of a building." A detached wall built of masonry is not a masonry building as defined by sec. 3 cl. (25) of Act III of 1890 (B.C.). In *re Corporation of Calcutta vrs. Jogeswar Lenka*, 8, C.W.N. 487.

The words "material alteration of the structure of any house" in sec. 236 of Cal. M. Act contemplate the erection of anything on a site attached to, or detached from any building standing on it, so as to alter the structure of the house, that is to say, of the house with all the buildings standing on that site. *Keshav Ch. Sen vrs. Calcutta, Municipal Corporation*, 7 C.W.N. 874.

Where permission was given to the plaintiff under sec. 237 of the B. M. Act to repair the roof and certain walls of his house and in order to effect such repairs he found it necessary to renew some of the walls or parts of the walls of the upper storey and also to renew some of the woodwork of a balcony which he was thus obliged to pull down and put up again; held that there was neither an erection nor a re-erection of a house within the meaning of section 240 of the Act nor was there any material alteration of the house within the meaning of the same section. *Chairman of Gaya Municipality vrs. Shamlal Gupta*, 3 P.L.J. 33.

The construction of portions of a house which had been entirely destroyed is a "re-erection" within the meaning of sec. 240 of the B. M. Act and does not merely amount to repairs. The building anew of the pillars, the balcony and the roof that existed before the fire was practically a re-erection

of the front portion of the house. *Baldeo Lal vs. Emperor* through Gaya Municipality, 38 I.C. 305.

**The Commissioners functions.** On receiving the notice together with any other informations and plans or specifications of the building and site plans, the Commissioners have one month's time in which to consider and decide on the proposal and they may grant it absolutely or subject to certain conditions specified in sec. 188 (1). The Legislature has confided to them the duty of deciding what the public requirements call for in this matter; but they are not to act capriciously or arbitrarily but reasonably and in accordance with rules framed by them.

**Sub-sec. (3):**—Material alteration is defined by this sub-section.

See Notes on Clauses, para. 80 quoted under the heading to this sub-division in this Chapter.

**Clause (a):**—Any alteration which affects the stability or safety of the building or the condition of the building in respect of drainage, ventilation, sanitation or hygiene falls within this clause. Thus the addition of an upper storey to a house, opening an arch or removing one in a wall, erecting new gates or open doors, closing or opening a window all fall within this clause.

The building of a pukka masonry platform between the outer wall of a house and the street drain is a "material alteration or enlargement of a building" for which previous sanction is necessary. *Chairman of Gaya Municipality vs. Babu Sukan Singh*, 37 I.C. 854.

Opening a new external door is an "external alteration" of the building in which the door is opened and requires sanction. *Queen Empress vs. Gujria*, 9 Bom. 568.

**Clause (b):**—This clause will cover the cases of raising of certain walls or roofs and if any by-law prescribes the minimum cubical capacity of any room or buildings, then the raising of partition walls in every such rooms or buildings.

The addition of an upper storey to a house would appear to come within this definition as it not only affects the stability or safety of the building but also increases the height and the cubical capacity of the building. This clause meets the case of *Emperor vs. Mathura Prasad*, 29 Cal. 491, where it was held that the addition of an upper storey to a house did not come under sec. 273 (1) of B. M. Act and there was no necessity for such permission; the ruling has been dissented from in a Patna case where it has been held by C. J. Chamier that the addition of a second storey to a house was

a material alteration or enlargement of the house within the meaning of sec. 240 of the Act. *Chairman of Gaya Municipality vrs. Shamlal Gupta*, 8 P.L.J. 88.

See in this connection the cases cited in the notes to sub-section (1) cl.

(a); (b).

Clauses (c) & (d). See notes to sec. 195.

**Government buildings.** Buildings and land which are the property, or are in the occupation of the Government and which are situate within municipal limits are exempted from municipal building laws by the Government Buildings Act IV of 1899. That Act applies to State Railway whether administered by the Government or by Companies; and to railways generally when the lands have been provided free of charge for the use of the Companies but remains the property of the Government. India Govt. P. W. D. No. 21, R. T. of 7th Jan., 1901 and Bengal Circ. (Munl.) No. 4 M of 81st January, 1901.

Plans and specifications required to validate notice.

**187. (1)** Where a by-law has been made prescribing and requiring any information and plans in addition to a notice, no notice under section 186 shall be considered to be valid until the information, if any, required by such by-law has been furnished to the satisfaction of the Commissioners.

(2) In any other case, the Commissioners may within fifteen days of the receipt of the notice required by section 186, require a person who has given such notice to furnish a plan and specification of any existing or proposed building, or part of a building, or well, together with a site plan of the land, with such reasonable details as the Commissioners may prescribe in their requisition; and in such case the notice shall not be considered to be valid until such plans and specification have been furnished to the satisfaction of the Commissioners.

## NOTES.

The section corresponds to sec. 179 of U. P. Act II of 1916 and sec. 287 of B. M. Act.

The power to frame by-laws is given by sec. 195. Where the by-laws require the submission of plans and informations in addition to the notice of intention to build under sec. 186. the notice will be valid only after submission of the informations and plans to the satisfaction of Commissioners. Where there are no by-laws the Commissioners may by sub-sec. (2) within 15 days of the receipt of the notice require the person to furnish a plan and specification of the existing or the proposed building, etc., together with a

site plan of the land with such other reasonable details as they consider necessary.

The notice will be invalid unless all the requisitions are complied with. But the Commissioners cannot go beyond and demand informations not within these provisions. In re Jamuna Das, 15 Bom. 516.

Sanction of work by Commissioners. 188. (1) Subject to the provisions of any by-law the Commissioners may either refuse to any work of which notice has been given under section 186 or may sanction it absolutely or subject to—

- (a) any written directions that the Commissioners deem fit to issue in respect of all or any of the matters mentioned in clause (e) of section 185, or in respect of the period within which the works shall be completed; or
- (b) a written direction requiring the set-back of the building or part of a building to the regular line of the road prescribed under section 173, or, in default of any regular line prescribed under that section, to the line of frontage of any neighbouring building or buildings.

(2) In the case of a refusal to sanction under sub-section (1), the Commissioners shall communicate in writing the reasons for such refusal to the person giving notice under section 186.

(3) Should the Commissioners neglect or omit for one month after the receipt of a valid notice under section 186 to make and deliver to the person who has given such notice an order of the nature specified in sub-section (1) in respect thereof, the Commissioners shall be deemed to have sanctioned the proposed work absolutely:

\* Provided that nothing in this sub-section shall be construed to authorize any person to act in contravention of this Act or of any by-law.

#### NOTES.

Sub-section (1) is based on sec. 180 of U. P. Act II of 1916 and sec. 287 of B. M. Act. Sub-section (3) corresponds to sec. 288 (2) of B. M. Act.

If by-laws have been framed under sec. 195 regulating buildings the Commissioners may subject to the provisions of the by-laws either refuse to sanction the works or sanction them absolutely or subject to certain written conditions. The directions may relate to any of the sanitary measures mentioned in sec. 195 (e) or they may limit the period within which the work

has to be completed or direct the owner not to encroach beyond the regular line of the road, if the regular line of the road has been defined under sec. 178, and if no such regular line has been defined then in a line of frontage with the neighbouring houses. If there are no by-laws regulating buildings then the Commissioners can either refuse or grant sanction absolutely; they cannot put any condition on the sanction; and such absolute refusal of sanction cannot be impeached unless the Commissioners act capriciously or arbitrarily or unreasonably. The Commissioners exist for public purposes and they are presumed to exercise their discretion properly and with due regard to public health, traffic and sanitation. See in this connection, 1 Patna 26 (I.L.R.) quoted below.

A municipality which has not framed any by-law under sec. 241 of the B. M. Act (sec. 195 of this Act) is not competent to insert reservations in a sanction to build but must either refuse to sanction or grant it without reservation. *Brijbehary Lal vs. Chairman of Daltongunj Municipality*, 1 Patna, 26 (I.L.R.)

**Prohibition of the re-erection of any house :—**Whether the Commissioners can prohibit an owner altogether from building on his land has not as yet been decided. If the Commissioners use their discretion properly with due regard to public health, traffic and sanitation for which they are responsible then their discretion cannot be challenged in any Courts of Justice but if they use their powers capriciously, arbitrarily and unreasonably then as all illegal actions of public bodies can be restrained the Commissioners can be restrained by injunction to refrain from interfering with the construction of the building, or they may be made to pay compensation for any damage sustained by the owner in consequence of the prohibition (sec. 190) or the Commissioners may be asked by Court to grant sanction after making reasonable alterations in the plan submitted. See also p. 268 post.

**Sanction given :—**If the Commissioners have given their sanction to any proposed building it is absolute when given and they cannot revoke it subsequently. But if a case of fraud or collusion on the part of the person is proved in connection with the obtaining of sanction then of course the sanction granted could be withdrawn. But simply on the ground that there was a mistake in granting the sanction it cannot be withdrawn. *Tularam vs. Corporation of Calcutta*, 30 Calcutta 317=7 C.W.N. 329.

The Commissioners should communicate their decision clearly to the intending builder and if they issue directions they must be in writing, otherwise they may not be able to apply the provisions of sec. 193.

Government has ordered that all petitions for sanction under this section and the records and reports connected therewith shall be preserved permanently because the period of limitation for suits by or on behalf of the local authorities for recovery of possession of any public street or road has now been fixed at 30 years under art. 146 of the Limitation Act. Cir. (Munl.) No. 83 M of 22nd Dec. 1900.

**Sub-sec. (2):**—Any directions of the Commissioners as to the construction must be given in writing in all cases and in cases of refusal of sanction the reasons for the refusal have to be communicated in writing to the person who wanted to build. The section gives them large powers of discretion and the matters on which they can make rules are extensive and if rules are made they can grant sanction subject to the rules absolutely or conditionally; and if no rules are made they can either refuse or grant sanction but can put no reservations on the sanction on considerations of public health, traffic and sanitation. The Legislature has confided to them and to them alone the duty of deciding what the public requirements call for in this matter. In exercising their powers, they should act, not capriciously or arbitrarily, but reasonably and in accordance with rules if any.

**Sub-sec. (3):**—If the Commissioners fail to pass any orders about the sanction matter within one month of the receipt of a valid notice under sec. 186, they shall be deemed to have given their sanction to the proposed work absolutely and the applicant may proceed to build. They cannot say that their failure was due to oversight, mistake or some other like cause nor can they be allowed to take steps to prevent the building from going on. If a case of fraud or collusion on the part of the plaintiff in obtaining the sanction is proved then the municipality can be justified in withdrawing the sanction. *Tullaram vs. Corporation of Calcutta*, 80 Cal. 317 at p. 383.

A person who submitted for the sanction of the Municipal Commissioners plans and specifications of a building and the Commissioners omitted to pass orders within six weeks (the time fixed by the Bengal Act) cannot be convicted under sec. 273 (1) of the B. M. Act (sec. 192 of this Act) for commencing to build according to his own plan after such period. That he made certain alterations after such period at the suggestion of the municipality does not make him forfeit his right under sec. 288 of the Act (sec. 188 cl. (3) of this Act) to build on his own plan. The period in such cases is to be computed from the date when complete plans and specifications are submitted in such a form as makes it possible of its being considered by the Municipal Commissioners. *Sewnandan Rai Kayab vs. Vice-Chairman, Darjeeling Municipality*, 5 C.W.N. 42.

When a person gave notice but without waiting for the prescribed period and without getting the sanction began to build, it was held that sec. 287 (sec. 186) laid no obligations on him to wait for the prescribed period and though he does not necessarily contravene the law if he does so begin, he does it at his own risk, for his act is liable to be treated as one in contravention of any legal order that the Commissioners may issue within the prescribed period, if such order does not sanction the proposed building. His act becomes valid, if sanction is obtained, but if sanction is refused within the statutory period, his act must be held to have been in contravention of their order from the commencement of the work. *Chandra Kumar Dey vs. Gonesh Das*, 25 Cal. 419.

But although a person can build, after the expiry of the period of one month even without getting the sanction of the Commissioners, in accordance with the plans and specification supplied with the notice, still in so doing he cannot infringe the other provisions in this Act or of any by-laws legally framed; if he does so the building would be liable to be demolished.

In a case under the Calcutta Municipal Act the Corporation gave its sanction to the erection of a building under a misapprehension which was due to the applicant not drawing the attention of the Corporation to all the necessary facts connected with the position and surroundings of the proposed building, it was held that sanction so given did not exonerate the applicant from liability under the Act, if the building be afterwards found to have been constructed in contravention of the Act. *Nonilal Set vs. Corporation of Calcutta*, 7 C.W.N. 853.

**Valid notice:**—a notice becomes valid when the plans and specifications, etc., are supplied to the Commissioners. See notes to sec. 186. The period of one month is to be calculated from the date on which a valid notice is given. Under the Bengal Municipal Act, sec. 238 the period fixed was six weeks in place of one month fixed by this section.

Appeals against refusal of sanction or conditional sanctions:—see sec. 378 and notes thereto.

**189. (1)** A sanction given or deemed to have been given by the Commissioners under the last preceding section shall be available for one year.

**(2)** After the expiry of the said period the proposed work may not be commenced except in pursuance of a fresh sanction applied for and granted under the foregoing sections.

# NOTES.

The section corresponds to sec. 181 of U. P. Act II of 1916 and sec. 289 of B. M. Act.

"At present a sanction is in force for a year but the Bill gives the Commissioners power if they choose to reduce the period." Notes on Clauses, p. 81.

When a sanction is once given it holds good for one year; once the work has commenced the sanction holds good even though only a small part of it is done within the year, no fresh application for sanction need be made for going on with the work already commenced. But the sanction will lapse if the work is not commenced within the year of the grant and a fresh sanction on a fresh notice will be necessary to commence it after the expiry of the year. If the sanction granted contains directions as to the time within which the work shall be completed, then it must be completed within that period or an extension of time should be obtained.

Sanction once granted is absolute and the Commissioners cannot withdraw it for mistake or oversight on the part of their officers. But if fraud or collusion in obtaining sanction is proved the Commissioners may be justified in withdrawing it. *Tullaram vrs. Corporation of Calcutta*, 30 Cal. 317 at p. 333.

See also in this connection *Naini Lal Set vrs. Chairman of Calcutta*, 7 C.W.N. 853 (cited more fully under sec. 191) where the Commissioners were misled.

Compensation for damage sustained through order passed under section 188.

**190. The Commissioners shall pay compensation to the owner for any damage which he may sustain in consequence of the prohibition of the re-erection of any house or of their requiring any land belonging to him to be added to the road.**

# NOTES.

The section corresponds to sec. 237 (1) proviso of B. M. Act.

This section secures full compensation to the owner in two cases, when the Commissioners prohibit the re-erection of any house and when they take some land for widening a street from adjacent owners. It would become due as soon as the municipality prohibits the re-erection or takes possession of the land and would be determined according to the state of things then existing and according to sec. 379.

**Any damage which he may sustain.** In a Bombay case it was held that the words of sec. 163 (which were the same as the present wording of the section) of the Municipal Acts III of 1872 & IV of 1876 (Bom.) were



intended to secure compensation to the owner for every sort of damage and not to restrict it to compensation for such damage as he might by his own arrangement reduce it to. Compensation becomes due under the section as soon as the Corporation takes possession, which is when the owner begins to build and the set-off becomes vested in the Corporation; and there being no words in the section to show a contrary intention, the compensation must be assessed according to the state of things then existing and not upon the basis of what the owner may have it in his power to do towards diminishing the damage which would otherwise result to him. *The Municipal Commissioners for the City of Bombay vs. Patel Haji Mahomed Janu*, 14 Bom. 202.

**Prohibition of the re-erection of any house:**—whether the Commissioners can prohibit an owner altogether from building on his land has not been decided, except in a case in Bombay under the Bombay Act. Where Parsons J. said as to sec. 88 of the Bombay Act "the orders that legally can be issued by a municipality under that section nowhere extend to the issue of a prohibition to a person not to build on his own land, but are strictly limited to the issue of orders in accordance with the provisions of the Act, and are intended to ensure that he shall so build so as not to offend against the requirements of the Act or such by-laws as the municipality may have legally made." *Godhra Municipality vs. Heptulabhai*, 2 Bom. L.R. 572 referred in 27 Bom. at page 244.

Under the section the Commissioners seem to have powers to prohibit the re-erection of a house. The Legislature has confided to them and to them alone the duty of deciding what the public requirements call for in this matter. The Commissioners exist for a public purpose and they are presumed to exercise their discretion properly and with due regard to public health, traffic and sanitation for which they exist. But in exercising their powers they are to act not capriciously or arbitrarily but reasonably and in accordance with rules if any framed under sec. 195. If the Commissioners in prohibiting the re-erection of a house act unreasonably, capriciously or arbitrarily then the refusal of sanction must be considered to be *ultra vires*. An illegal and *ultra vires* actions of public bodies can be challenged in Courts of Justice, a declaration might be obtained from Civil Courts in such a case of illegal and improper refusal of sanction, that the action of the municipality is *ultra vires*. For payment of compensation in cases of prohibition against encroachment beyond the "regular line of the road" and "setting back" of houses see secs. 173 & 174 and notes thereto.

**191. A sanction given or deemed to have been given under section 188 shall exempt the person to whom the sanction is given or deemed to have been given from any**

Effect of sanction.

penalty or consequence to which he would otherwise be liable under sections 174, 192 or 193, but shall not operate to relieve any person from the obligation imposed by section 179 to obtain separate sanction for any structure referred to therein.

### NOTES.

The section is based on sec. 184 of U. P. Act II of 1916 and proviso to sec. 258 (2) of B. M. Act.

Under this section when a sanction to certain works is either given or which under the law is presumed to be given [sec. 188 cl. (3)] the person to whom sanction is given is freed from all responsibility and exempted from the penalties for not setting back houses projecting beyond the regular line of the road (sec. 174) or for illegal erections or alterations of buildings without valid notice under sec. 186 and waiting for one month after that or for building in contravention of the directions given under sec. 188 and the Commissioners cannot also proceed to stop erection or to demolish buildings erected. But as sanction granted remains in force for one year (sec. 189) if the sanctioned work is not commenced within the period, a fresh sanction must be obtained before commencement of the work but no sanction would be necessary if in pursuance of the sanction the work had been started and only a small portion is done and the major portion remains unfinished.

Sanction once granted under sec. 247 of the Calcutta Municipal Act (a similar section) is absolute and the Commissioners cannot withdraw it for mistake or oversight on the part of the officers. But if fraud or collusion in obtaining the sanction is proved the municipality may be justified in withdrawing sanction. *Tullaram vs. Corporation of Calcutta*, 30 Cal. 317, at p. 333.

So also in a case under the Calcutta Municipal Act where the Corporation gave its sanction to the erection of a building under a misapprehension which was due to the applicant not drawing the attention of the Corporation to all the necessary facts connected with the position and surroundings of the proposed building it was held that the sanction so given would not exonerate the applicant from liability under the Act, if the building be afterwards found to have been constructed in contravention of the provisions of the Act. *Noni Lal Set vs. Corporation of Calcutta*, 7 C.W.N. 853.

Illegal erection or alteration of a building.

**192.** Any person who begins, continues or completes the erection or re-erection of, or any material alteration in, a building or part of a building, or the construction or enlargement of a well, without giving the notice referred to in section 186

and waiting for one month after giving such notice, or in contravention of an order of the Commissioners refusing sanction or any written directions made by the Commissioners under section 183 or any by-law, shall be liable to a fine not exceeding five hundred rupees.

#### NOTES.

The section is based on section 185 of U. P. Act II of 1916, and sec. 271 of B. M. Act.

This section penalises any breach of the provisions of section 186, 188 or any by-law framed under sec. 195, i.e., building without giving notice under section 186 and waiting for the period of one month awaiting the sanction or building inspite of the refusal of sanction or in contravention of any of the directions of the Commissioners or any by-law made by them.

Prosecutions will be according to sec. 375. See notes to the section.

A prosecution under section 271 of the Act is not justified unless the objection is disposed of according to the terms of the law laid down under sec. 178. A person need not comply with the orders mentioned in the notice under section 178 if he has filed an objection. If the objection is decided in his favour then the notice is cancelled. If it is decided against him, then the decision cannot have the retrospective effect of punishing him for the default committed by him with respect to the first notice. *Rampartap Lal vs. Barh Municipality 1922, Patna 183 (A.I.R.)=3 P.L.T. 801.*

Power of Commissioners to stop erection and to demolish building erected.

**183.** In any case where the Commissioners consider that the erection, re-erection or alteration of a building, or part of a building, or the construction or enlargement of a well, on any land is an offence under section 192, they may within fifteen days from the date on which information is received by them of such offence, by written notice direct the owner or occupier of the land to stop such erection, re-erection, alteration, construction or enlargement, and may in like manner and within the same period direct the alteration or demolition, as they deem necessary, of such building, part of a building or well:

Provided that no action shall be taken under this section more than fifteen days after such erection, re-erection, alteration, construction or enlargement has been completed.

#### NOTES.

The section corresponds to sec. 196 of U. P. Act II of 1916 and sec. 241 (3) of B. M. Act.

sec. 186

Under the Bengal Act sec 241 (3), if any person builds, without, or contrary to the directions given, the notice has to be delivered within fifteen days but it is not mentioned from what date the fifteen days are to run. It has been held that the period runs from the date of the commencement of building and thus the action of the municipality is in many cases nullified. Under the United Provinces Act, there is no period of limitation but it seems preferable that there should be some limit and this clause prescribes three months time (which was the time fixed by the clause in the original Bill) from the receipt of information by the Commissioners." Notes on Clauses, p. 88.

The Select Committee reduced the period of three months mentioned in the original section of the Bill to 15 days. The report of the Select Committee, para 60 runs thus:—" We consider that the clause as drafted might lead to unnecessary harassment of persons who had erected buildings. It might happen that information of the offence was not received till many months after the completion of the building and it would be clearly hard in such cases to permit the Commissioners to direct its demolition. We have therefore reduced the period within which action must be taken from three months to 15 days and have inserted a proviso that no action under the section is to be taken more than 15 days after the building is completed." If the Commissioners find that any person has, by reason of any erection, re-erection of the whole or part of a building or construction or enlargement of a well without sanction or building without waiting for a month after giving notice under sec. 186, or building in contravention of any directions given in the sanction, committed an offence under sec. 192 of this Act they can either prosecute the man under sec. 192 or direct the owner to stop the erection, re-erection, etc., by notice served within fifteen days of their receipt of information of the illegal construction and by a further requisition made within the same period of fifteen days direct the alteration or demolition of the unauthorised erections, etc.

The proviso enacts that actions under this section cannot be taken more than fifteen days after the completion of the work in question, the Commissioners if they want to pursue the remedy under this section must proceed to issue notice for stopping, demolishing or altering any unauthorised erection within fifteen days of the receipt of information of their being so constructed.

The requisition will be made under sec. 359 and if the owners do not comply with it the Commissioners may cause the work to be done and realise the cost from the owners. The owners may file any objections and the objections will be disposed of under secs. 361 & 362.

The notice referred to in sec. 288 of the B.M. Act must be served within fifteen days from the time when the building is commenced and not within 15 days from the when the municipality has notice of the building. *Ramdhan Lal vs. Chairman of Patna Municipality*, 1 Pat. 42 (I.L.R.)=69, I.C. 183. See in *Chairman of Patna Municipality*, 1 Pat. 42 (I.L.R.)=69, I.C.\*183. See in this connection the Notes on Clauses, para 83 quoted above. The present section has laid down that the notice must be served within fifteen days from the date on which information of the construction is received so the above ruling must be taken to be inapplicable where the B & O Municipal Act applies.

For appeals against notices or prohibitions under the section see sec. 373 and notes thereto.

**194. (1) Whenever it appears to the Commissioners that any building, part of a building, wall, bank, or other structure or anything affixed thereto is in a ruinous condition and dangerous to persons or property, the Commissioners may,—**

Power for the prevention of danger from ruinous buildings

(i) forthwith cause a proper hoard or fence to be put up for the protection of any persons who may be endangered, and

(ii) by notice require the owner or occupier of the building, or the owner or the occupier of the land to which such building, wall, bank, or other structure is affixed, within seven days to demolish, secure or repair such building, wall, bank or other structure, or

(iii) where it appears to the Commissioners that immediate action is necessary for the purpose of preventing imminent danger to any person or property, themselves take such immediate action and recover the cost thereof from the owner or occupier of the building or land.

(2) Any person who fails to comply with a requisition issued by the Commissioners under clause (ii) of sub-section (1) shall be liable to a fine not exceeding one hundred rupees, and to a further fine not exceeding twenty rupees for every day during which the default is continued after the expiration of eight days from the date of service on him of such requisition.

The section corresponds to sec. 210 of B. M. Act and sec. 268 of U. P. Act II of 1916.

The Commissioners are constituted the sole judges for deciding whether the building, wall, bank or other structure or any other thing affixed thereto

is dangerous to persons or property. Whenever it appears to them that any building or part thereof, wall, etc., is in a ruinous condition and is dangerous to person or property they are to put up a hoard or fence round it and by a notice require the owner or occupier of the building or of the land to which the building is affixed to demolish, secure or repair it within seven days of the service of the notice or if the building, etc., is in such a wretched condition that it demands immediate repairs or demolition they may have the work done through their own agents and recover its costs from the owner or occupier of the land.

**Person or property:**—see the corresponding section 210 of B. M. Act where the words are “ dangerous to the inmates if any of such building, or of any other building or to passers-by.” The word “ person ” includes inmates of the house or neighbouring houses or any outsider or passer-by.

**Sub-sec. (2) :**—Failure to comply with a requisition under sub-sec. (1) clause (ii) is punishable under this sub-section. For the procedure to inflict a daily fine see notes to sec. 103.

In a case under sec. 63 of Act III (B. C.) of 1864 the wording of which was similar to sub-sec. (1) it was held that the section gave the determination of the question of fact as to whether the building was or was not in a ruinous state to the Commissioners and to no one else. If the Commissioners deemed the house to be ruinous or in any way dangerous to passengers they could legally proceed under the section. *Gopee Kishen Gossain vrs. Mr. W. H. Ryland and others*, 9, W.R. 279.

Section 210 of the B. M. Act vests the Commissioners with the discretion of deciding whether a building is dangerous and with power to issue a notice requiring the owner to repair it or pull it down. Although an objection to the notice was taken in a letter which was unstamped still the municipality should, as prudent men for their own interests, have taken notice that such an objection was advanced, though informally and should have satisfied themselves that they were proceeding in accordance with the law. *Harendra Nath Mukherji vrs. Chairman, Birnagar Municipality*, 1 C.L.J. 51.

The joint conviction and passing of a jointly penalty on the owner and occupier under a similar section of the Calcutta Municipal Act (sec. 444) was held illegal. *Bhairab Chandra Kolay vrs. Corporation of Calcutta*, 14 C.W.N. 911.

Power to make by-laws regulating buildings.

**195. The Commissioners at a meeting may, and where required by the Local Government shall, make by-laws, consistent with this Act and any rule framed thereunder, applicable to buildings generally or to any**

particular class of buildings within the whole or any part of the municipality, and may by such by-laws—

- (a) require notice of intention to erect, re-erect or alter a building or to make or enlarge a well, or exempt any class of buildings or wells in respect of the liability to give notice under section 188;
- (b) determine the information and plans to be furnished with such notice;
- (c) prescribe the minimum cubical capacity of a room, or declare an alteration of any specific description to be a "material alteration";
- (d) prescribe that, on payment of fees in accordance with such scale as is specified in this behalf, plans and specifications shall be obtainable from the Commissioners or from an agency prescribed by the Commissioners;
- (e) prescribe, with reference to the erection, re-erection or alteration of buildings, or of any class of buildings, all or any of the following matters:—
  - (i) the materials and method of construction to be used for external and party walls, roofs and floors;
  - (ii) the provision, position and the materials and method of construction of fireplaces, chimneys, drains, latrines, urinals and cesspools;
  - (iii) the ventilation of drains, latrines, urinals and cesspools and the provision of access thereto from roads;
  - (iv) the ventilation and the space to be left about the building to secure free circulation of air and to facilitate scavenging and for prevention of fire;
  - (v) the free passage or way in front of the building;
  - (vi) the height and slope of the roof above the uppermost floor upon which human beings are to live or cooking operations are to be carried on;
  - (vii) the level and width of foundation, level of the lowest floor, and stability of structure;
  - (viii) the number and height of the storeys of which the building may consist;

- (d) the means to be provided for egress from the building in case of fire;
- (e) any other matter affecting the ventilation or sanitation of the building; and
- (xi) the conditions subjects to which sanction for the construction and alteration of a well may be refused or granted with a view to prevent pollution of the water or danger to any person using the well; and
- (f) regulate in any manner not specifically provided for in this Act the erection of any enclosure, wall, fence, tent, awning or other structure, of whatsoever kind or nature, on any land within the limits of the municipality.

#### NOTES.

The section corresponds to sec. 241 of B. M. Act. Clause (d) corresponds to sec. 298 (2) (A) (d) of U. P. Act II of 1916.

This section empowers the Commissioners at a meeting to frame by-laws, which if they think proper they can do, but if they are required by the Local Government to do so they are bound to frame them in strict accordance with the aim and object of the Act and any rules framed thereunder, regulating the erection of all buildings generally or any particular class of buildings either within the entire municipal area, or a specified portion of it.

**Consistent with this Act:**—the words in the corresponding section 241 cl. (2) of B.M. Act were “ rules under this section not inconsistent with the Act, shall be subject to the sanction of the Local Government, and shall if sanctioned be published in such manner as the Local Government directs and shall have the force of law.”

The words “ not inconsistent with the Act ” were discussed in a Bombay case in which the words were held to mean “ not inconsistent ” with the scope, aim and object of the Act as shewn by its provisions. If a rule or by-law is not inconsistent with or does not alter or contradict any of the provisions of the Act it will be taken as “ consistent ” with the Act. *Tribhovan Chunilal vrs. Ahmedabad Municipality*, 27 Bom. 221.

For a similar use of the phrase “ consistent with this Act ” see secs. 19, 42, 81 and notes thereto *ante*.



The power of framing by-laws supplementary to the general laws have been given to the Commissioners under this Act and sanction or confirmation of the Local Government is necessary as under the Bengal Act. See secs. 185, 284, 258 and 274.

The Commissioners have also been given power to frame rules under this Act but the rules are not to take effect until they have been confirmed by the Local Government.

Government has also framed model by-laws the Commissioners may adopt them with such modifications as they think necessary.

**The by-laws must also be reasonable:**—the power given to the commissioners may be exercised as they think proper which means that it should be exercised, not capriciously or arbitrarily, but reasonably provided the order is "not inconsistent with the provisions of the Act."

If the action of the municipality taken under any section of the Act is not inconsistent with the provisions of the Act, it will be legal provided it is reasonable. "As observed by Lord Russel, C. J. in *Kruse vrs. Johnson* (which has been approved in subsequent decisions, *Gentel vrs. Rapps*, 1 K. B. 160) if the by-laws of a public representative body "were found to be partial and unequal in their operation as between different classes; if they were manifestly unjust; if they disclosed bad faith; if they involved such oppressive or gratuitous interference with the rights of those subject to them as could find no justification in the minds of reasonable men, the Court might well say: 'Parliament never intended to give authority to make such rules; they are unreasonable and *ultra vires*.' But it is in this sense only that the question of unreasonableness can properly be regarded. A by-law is not unreasonable merely because particular judges may think that it goes further than is prudent or necessary or convenient, or because it is not accompanied by qualification or an exception which some judges may think ought to be there." Per. J. Chandavarkar in *Tribhovan vrs. Ahmedabad Municipality* 27 Bom. at page 249.

**Any rule framed thereunder:**—rules are framed by the Local Government under secs. 19, 42 (2), 81, 168, 281, 325 & 341 and by the Commissioners at a meeting under secs. 38, 42 (1) & 52.

The power to frame by-laws under this section is subject to the provisions of sec. 354 of the Act, i.e. they are to be previously published and they take effect only after confirmation by the Local Government and publication in the Gazette.

**Clause (a):**—sec. 186 (1) requires that every person before beginning to erect, a new building or new part of a building or to re-erect or make a

material alteration in a building or make or enlarge a well shall give notice of his so doing and this having been sufficiently provided for by the section it is not necessary to frame by-laws about the first part of this clause.

If it is thought fit by the Commissioners that any class of buildings or wells may be erected without their permission then by-laws would be necessary enumerating the class of buildings or wells exempted from the liability to give the notice under sec. 186.

**Clause (b):**—the by-laws under this clause would lay down what informations, plans should be filed with the notice under sec. 186 (1) *e.g.*, the description of the building, the materials with which they are to be built and the provisions for drainage, latrine, etc.

**Clause (c):**—the minimum size of rooms in any buildings may be fixed by the by-laws and what would constitute a 'material alteration' more definitely stated than those given in sec. 186 cl. (3) *ante*.

**Clause (d):**—this clause is similar to sec. 298 (2) (A) (d) of the U. P. Act II of 1916. The by-laws may empower the Commissioners to supply specifications and plans either from their office or from their appointed agents on payment of proper fees.

**Clause (e):**—corresponds to clauses (a) to (i) of sec. 241 of B. M. Act.

The by-laws under this clause when framed would be the principal building rules of the municipality and by them the Commissioners can prohibit the erection of insanitary buildings.

Under sec. 391 of this Act by-laws framed under any Act repealed by this Act are to be considered to have been duly made under this Act, and shall have the same force and effect as rules made under this Act until new rules are framed according to it.

Sub-clause (iv):—Construction of platforms on open space between house and drain is an erection and requires sanction. An order to a house owner to leave an open space between the external wall of his house and the drain adjoining the road is not illegal when there is a by-law to that effect.

Sec. 241 (d) of the B. M. Act indicates the line or foundation upon which a municipality is to frame their rules. If they exceed their jurisdiction and the limitations imposed upon them by the section the rules will be *ultra vires*. Where the rules are framed in the interests of public health they should not be construed in too strict and too limited a sense. Chairman of Gaya Municipality *vs.* Sukar Singh, 37 I. C. 854.

**Clause (f):**—This clause empowers the Commissioners to make by-laws regulating the erection of temporary structures such as enclosures, walls, fences, tents and awning, etc.; the erection of permanent structures (per-

manent walls, etc.) being provided by secs. 186, 188 the by-law under this clause cannot touch them.

Where the accused had only laid the foundation a few feet below the ground level the brick work of which had not even reached the plinth level and there was no evidence to show what kind of building the accused was going to construct and whether the main building when completed would contravene the clauses of the rule for infringing which he had been convicted nor had the municipality taken steps to enforce the submission of any plan, it was held that the conviction could not be maintained because there was in fact no building in existence and it was not known whether and where the building would be erected. *Shiv Dutt Ray vs. Satish Chandra Ghosh*, 52 I. C. 886.

A municipality which has not framed any by-laws under sec. 241 of B. M. Act is not competent to insert reservations in a sanction to build but must either refuse the sanction or grant it without reservation. The erection of a verandah is the erection of a building within the meaning of sec. 237. *Brijbehary Lal vs. Chairman of Daltongunj Municipality*, 1 Pat. 26 (I.L.R.)=1921 Pat. Sup. 847.

The question for decision being whether a by-law passed by a municipality under sec. 241 of the B. M. Act forbidding the erection of a boundary wall within five feet from the road without sanction was *ultra vires* the municipality held that when a house is being built for the first time or is being re-built and it is proposed also to erect a boundary wall then the boundary wall being a part of the scheme for the house falls within section 237 and therefore within section 241, but when a house is neither being built nor re-built, the erection of a boundary wall does not fall within the scope of section 237 and, therefore, the municipality had no power to frame a by-law under sec. 241 relating to the erection of a boundary wall apart from its erection as part of a scheme for building or re-building the house itself. *Basanta K. Bose vs. Chairman of the Municipal Commissioners of Giridih*, 1 Pat. 44 (I.L.R.)=1921 Pat. Sup. 849. See also *Corporation of Calcutta vs. Benoy K. Bose*, 12 C.L.J. 476 and notes to sec. 186 in this connection.

#### REMOVAL OF ENCROACHMENTS ON ROADS, HOUSE-GULLIES AND PROPERTY OF THE COMMISSIONERS.

Notice to remove obstructions and encroachments on roads, house-gullies and property of the Commissioners.

**193. (1) The Commissioners may, subject to the provisions of sections 179 and 182, issue a notice requiring any person to remove any building which he may have built, or any wall, fence, rail, post or other obstruction or encroachment which he may**

sec. 10. Notes

have erected, in or on any house-gully, public drain, aqueduct, water-course or ghat or any property vested in the Commissioners.

(1) If the person who built or erected the said building, wall, fence, rail, post or other obstruction or encroachment is not known or cannot be found, the Commissioners may cause a notice to be posted up in the neighbourhood of the said building, wall, fence, post or other obstruction or encroachment requiring any person interested in the same to remove it, and it shall not be necessary to name any person in such requisition.

### NOTES.

Sub-section (1) corresponds to sec. 202 of B. M. Act and Sub-sec. (2) corresponds to sec. 203 of B. M. Act.

"The section enables the Commissioners to preserve the width of the road, with the open drains, etc., free from obstruction by removing obstructions or encroachments erected therein. It is clear upon the authorities in England, that any individual who is specially injured by an obstruction on the public highway has a right to remove that which unlawfully causes a special injury to him; but a private individual has no right to remove an obstruction which causes no special injury to him, and which is simply an obstruction to the road as regards the public in general, as distinguished from the individual. The local authority which is guardian of road has the right to remove the obstruction. *Bagshaw vrs. Buxton Local Board* (1875) 1 Ch. D. 220." J. Pargiter's B. M. Act, p. 209.

This section gives the Commissioners discretion to take action or not and relates to the removal of obstructions or encroachments in house-gullies, public drains, aqueducts or ghats or any other property vested in the Commissioners.

"House-gully" is defined in sec. 3 (10). See notes to the section *ante*.

"Property vested in the Commissioners" defined in sec. 58. See notes to the section.

The section does not apply to private roads over which the Commissioners may under certain circumstances (as sec. 61) acquire some control only but which are not vested in the Commissioners.

Several houses surrounded an open court which originally belonged to a single individual. The plaintiff built an "ota" or verandah and put up a wooden bench in front of his house.

which the municipality of the town ordered to be removed. In a suit by the plaintiff to have the order set aside the District Court found that the occupant of each house had the right of way across the court, which was used as a means of access to the houses which surrounded it by persons having business with the shareholders, held that such limited access by the public was not sufficient to show that the court ceased to be private property and was converted into a 'street' vesting in the municipality within the meaning of secs. 8 & 17 of the Bombay District Municipal Act VI of 1873; and that the municipality had not any right to interfere with the plaintiff's erection, whatever liability he might have incurred to an action by any one of the other householders who occupied the house. *Kalidas vrs. The Municipality of Dhandhuka*, 6 Bom. 686.

When a notice was issued under sec. 215 of Bengal Act V of 1876, requiring a person to remove an alleged obstruction. The requisition was not complied with, and the person was prosecuted for non-compliance under sec. 216 before a Bench of Honorary Magistrate it was held that the Court had power to inquire whether the alleged obstruction was, in point of fact an obstruction or not. Although an order under the section if properly made could not be questioned in any Court the accused can, when prosecuted for disobedience of it, claim exemption from its operation on the ground that it was not an order which he was bound to obey as being an order beyond the municipality's power and jurisdiction. In the matter of the Municipal Committee of Dacca *vrs. Someer*, 9 Cal. 88.

**Obstruction or encroachment.** The word "obstruction" rather denotes the effect of the thing than the thing itself: and may apply both to a projection and to an encroachment, both to something on the road as well as to something above it. The obstruction or encroachment must be something which has been erected, an accidental obstruction is not what is contemplated by the section. *Anon* (1865), 3 W.R. 38.

When a shopkeeper stored some jaggery bags on the bazar road within the municipality without permission from the municipality under sec. 173 of the District Municipalities Act (1884) which provided that no person should deposit anything so as to cause obstruction to the public in any street without the written permission of the Municipal Council it was held that the depositing by any one of any article on the high road except with the license of the municipality is an obstruction. The public were entitled to the whole width of the road unimpeded by any article deposited thereon the deposit might not be very great but in law it was an obstruction. *Queen Empress vrs. Bolappa*, 11 Mad. 343. See also *Queen Empress vrs. Virappa Chetti*, 20 Mad. 488 in this connection.

The eaves of a house projected over the public road to the extent of one foot eight inches and the municipality issued notice to remove the said eaves as being a "projection," "encroachment or obstruction" within the meaning of sec. 195 of Bom. Act III of 1872 and Act IV of 1878. The plff. thereupon sued the municipality praying for an injunction against the Municipal Commissioners, it was held that the eaves constituted an obstruction within the meaning of the section and the Municipal Commissioners were entitled to remove them. Under the section the question to be decided was not whether there was a real practical inconvenience to the public traffic in the street. Those were not the words used in the section and if that was the intention of the Legislature it would have been expressed. *E.C.K. Ollivante vs. Rahimtulla Nur Mahamed and another*, 12 Bom. 474. A person put a bench upon a street in front of his *ota* (verandah), in a suit by the plaintiffs for restraining the municipality from removing the bench it was held that the obstruction in the case was a seat permanently fixed into the street and although it might be close to the plaintiffs' house it was none the less in the street over the whole of which the public had the right of passing. Under the Bombay Act the municipality had power to remove all obstructions in a public street, whether the obstructions were placed lawfully or not. *The Ahmedabad Municipality vs. Manilal Udenath*, 19 Bom. 212.

A person who has, without any objection on the part of the municipality, encroached on the surface of a municipal street by a projection has no right to run up the projection to any height he likes, even though he does not thereby cause any further encroachment in breadth over the street. *Rakhal Chandra Dey vs. Chairman of Suri Municipality*, 46 Indian Cases 306.

In a suit brought against a Municipality to restrain them from obstructing the plaintiff in reinstating a stone which was imbedded in his *otla* in its original position (which had been in situ for 12 years) and that the municipality had no right to interfere, it was held that the municipality was the creature of a statute with duties *inter alia* to preserve the passage along the public streets. It mattered not for the municipality whether the encroachment had been in existence for 12 years or more. Under sec. 118 of the District Municipal Act (Bombay Act III of 1901) the municipality might, on proof that the encroachment objected to was an obstruction to the safe and convenient passage along a street by written notice, require the owner to remove it. Sec. 122 of the Act empowered the municipality to remove the encroachments which might have been put up after the place had become a municipal district. *Dakore Town Municipality vs. Travedi Anupram Haribhai*, 38 Bombay 15,

If written sanction for projection of platforms have been given no action can be taken under this section.

As to objections to notice under this section (or appeals as they are called) and the procedure for their disposal see sec. 378 and notes thereto.

**Sec. 202 (2).** Corresponds to sec 208 of the B. M. Act. This procedure is to be followed when the person who causes the obstruction or encroachment is unknown or cannot be found. The requisition under this section is to be issued under sec 359 and the objections or appeals to such requisitions are to be disposed of according to sec 378. The Commissioners may also remove the obstructions, etc., after getting an order from the Magistrate directing their removal notwithstanding the provision of secs. 359 to 368. Any person would be entitled to compensation who could show that the encroachments existed for more than 8 years or from before the municipality was created. See sec 200 post.

**Notice:**—Notice is to be served according to sec 357 or 358. The period within which the encroachment is to be removed or requisition complied with is fixed at 8 days by sec 198.

Notice under this section should be served on the person who has erected the wall or obstruction, etc., and on failure to comply he alone is liable to prosecution under sec 208 (2). Where a person was prosecuted for failing to comply with a notice under sec. 202 of B. M. Act and the accused repeatedly asked that the requisition should be served upon his lessee who had erected the encroachment and the Magistrate also found that the encroachment had been erected by the lessee it was held that the requisition ought to have been served on the lessee and the conviction of the owner was set aside. *Shyam Bibi vrs Jadab Chandra Bannerji*, 2 C L J 226.

**Time of erection of obstruction, etc.** The obstructions or encroachments must be shown to have been in existence for more than 8 years or from before the municipality was constituted whichever period is shorter to entitle one to get compensation from the municipality for their removal. See sec. 200 and notes thereto.

Under the Bengal Act sec. 202 to come within the purview of the section the obstruction or encroachment would have to be shown to have been erected after the District Municipal Improvement Act 1864 or the District Town Act 1868 or the Bengal Municipal Act 1876 took effect in the municipality.

And the section (of the B. M. Act) was held not to apply to what was erected for the first time before the dates mentioned, and re-erctions were held to be exempted. *Ishan Chandra Mitra vrs. Ranku Bahary*, 25 Cal. 100. See also *Kalagobinda vrs. Municipality of Thana*, 23 Bom. 348.

Not to remove projections on houses encroaching on roads, house-gullies, and property of the Commissioners.

197. The Commissioners may, subject to the provisions of section 133, issue a notice requiring the owner or occupier to remove or alter any projection, obstruction or encroachment erected or placed against or in front of such house, if the same overhangs the road or juts into, or in any way projects or encroaches upon, or is an obstruction to the safe and convenient passage along, any house-gully, or obstructs, or projects, or encroaches into or upon any public drain or aqueduct in any road, or into or upon any public water-course or part of any property vested in the Commissioners.

### NOTES.

The section corresponds to secs. 204 & 233 of B. M. Act.

The objects of the section is to preserve the width of the road and the drains, aqueducts, public water-courses, etc., free from obstructions by maintaining the architectural frontage uniform.

The previous section relates to encroachments or obstructions on any house-gully, public drain, aqueducts, water-courses, etc., and this section relates to projection or encroachment erected or placed against or in front of such house when the same overhangs or encroaches upon or is an obstruction to the safe and convenient passage along any house-gully, public drain, etc.

**Projection, encroachment or obstruction:**—"A projection from a building means part of a building projecting from it or jutting out; it means a prominence extending from the building in the sense of coming out from the building as part of the building." *Hull vs. The London County Council* (1901), 1 K.B. 588.

The thing must be on the road, drain, etc., or above it; the latter would probably be the more usual sense of the word projection in this connection, as the former sense would more suitably belong to the word encroachment. The word obstruction would denote rather the effect of the thing than the thing itself; and would apply both to a projection and to an encroachment, both to something on the road as well as to something above it." Justice Pargiter's B. M. Act, page 213.

The projection, encroachment or obstruction must be something which is erected or placed against or in front of such house and it must overhang the road or project or encroach upon or be an obstruction to the safe and convenient passage along any house-gully, etc.

**Effect produced by the projection, encroachment or obstruction:**—Mark the difference in the wordings in the Bengal Act; under sec. 204 as regards



roads the projection, encroachment must be erected or placed against or in front of the house and (1) it must overhang the road or (2) jut into or (3) in any way project or encroach upon or (4) be an obstruction to the safe and convenient passage along any road; and in the case of any aqueduct, drain or sewer in such road, if the projection, etc., (5) obstructs, projects, encroaches into or upon it.

But under the present section the projection or obstruction or encroachment must be erected or placed against or in front of the house and (1) must overhang the road or (2) jut into or (3) in any way project or encroach upon, or (4) be an obstruction to the safe and convenient passage along a house-gully or (5) obstruct or project or encroach into any public drain or aqueduct in any road or into or upon any public water-course or ghat or any other property vested in the Commissioners.

The difference in the wording of the two sections suggest that under the present section the projections or obstructions, etc., need not be an obstruction to the safe and convenient passage along any road, but it would suffice if the projection, obstruction or encroachment, etc., is an obstruction to the safe and convenient passage along a house-gully only and not along a road; so the fourth element mentioned in the B. M. Act has been made more restricted and any obstruction, encroachment or projection if it simply overhangs the road or juts into it or in any way projects or encroaches upon or obstructs the safe and convenient passage along a house-gully or projects or encroaches on any public drain, aqueduct in any road or into or upon and public water-course or ghat or any property vested in the Commissioners, it will come within the purview of the present section.

A pandal erected in front of a building in a public street was held to be a projection under the Madras Act, 4 I. C. 829=7, M.L.T. 66.

The eaves of a house projected over a public road to the extent of 1 foot and 8 inches and the municipality issued notice to remove the said eaves as being a projection, encroachment or obstruction within the meaning of section 195 of Bombay Act III of 1872 and IV of 1879. The plaintiffs thereupon sued the municipality praying for an injunction against the municipal commissioners; it was held that the eaves constituted an obstruction within the meaning of the section and the municipal commissioners were entitled to remove them. Under the section the question was not whether there was any practical inconvenience to the public traffic in the street. Those were not the words used in the section and if that was the intention of the Legislature it would have been expressed; the principle laid down in *Bagshaw vrs.*

Buxton Local Board of Health (see below) was quoted with approval. *E. C. K. Olivant vrs. Rahimtulla Nur Mahamad and another*, 12 Bom. 474.

In the case of *Bagshaw vrs. Buxton Local Board of Health*, L.R. 1, Ch. Div. 220, a question was raised upon precisely similar words in an English statute. In that case the defendants objected to a small enclosed garden in front of the plaintiff's house in which plants and shrubs were growing as "an obstruction to the safe and convenient passage" along the street. The plaintiff sued to restrain the defendants from removing the alleged obstruction or interfering in the plaintiff's enjoyment of the garden. The street was 36 feet wide. *Jessel M.R.* said; "I have no doubt that the wall and shrubs have obstructed and that they are obstructions; so that the only question remaining is whether they are obstructions 'to the safe and convenient passage along any street.' The words 'along a street' mean along the whole of the street and if you take and enclose a portion of the street itself, how can it be said that that is not an obstruction to the safe and convenient passage along the street?"

A bench permanently fixed close to a house was held to constitute an obstruction; the public had a right of passage over the whole width of the street. *The Ahmedabad Municipality vrs. Mani Lal Udenath*, 19 Bom. 212.

See also the other cases cited in the notes to sec. 196.

The obstruction must be by something erected and accidental obstruction is not what is contemplated by the section. *Anon.* 3 Weekly Reporter 33 (1865).

**Erected or placed.** The Bengal Act secs. 204 and 233 fixed a date, *vis.*, the date on which the District Municipal Act 1864 or the District Towns Act, 1868, or the Bengal Municipal Act 1876, or in case none of these Acts were ever extended then the date on which the B. M. Act of 1884 took effect in or were extended to the municipality, after which the erection or placing must have been in order to come within the purview of the sections. No such date is fixed by the present section; so all erections, etc., which project or obstruct or encroach upon the public road, etc., are liable to be dealt with under this section and the persons who are affected by it can only be entitled to compensation if they prove that the encroachments are either more than three years old or that they existed before the municipality was constituted whichever is the shorter period.

In a Madras case under the Towns Improvement Act 1871 it was held that when a pial existed for fifty years and before the Act was extended to the municipality that the municipality's action in removing the pial was illegal. *Hanumayya vrs. N. A. Roupell*, 8 Mad. 64.

The words "which may have been so erected or placed" in sec. 204, B. M. Act were held to mean "erected or placed for the first time." The section did not apply to the case of a projection forming part of a building which was merely in substitution for an old building which had existed upon the same site before the date on which the District Municipal Improvement Act 1864 or the District Towns Act 1868 or the Bengal Municipal Act 1876 as the case may be, took effect in the Municipality. *Eshan Chundra Mittra vs. Banku Behary Pal*, 25 Cal. 160=1, C.W.N. 660.

In a Madras case it was held that the repair of an existing masonry covering which had been there for more than 40 years did not constitute an interference with the drain within the meaning of sec. 211 of the District Municipalities Act. The Municipal Council of Tanjore *vs.* Visvanath Rana, 21 Mad. 4.

"The question has been raised under the corresponding section (208) of the Calcutta Act (B. C. Act IV of 1876) as to whether the taking down and rebuilding of an old projection could be held to be the erection of a new projection. On a reference to the Advocate-General it was held that if the old projection had been taken down with the obvious object of rebuilding it, and another of the same dimensions put up without undue delay, it could not be considered to be a new projection." Collier's B. M. Act, page 159.

"Road" is defined in sec. 3 (24) and "House-gully" is defined in sec. 3 (10).

"Property vested in the Commissioners" defined in sec. 58.

Road in this section does not mean private roads but means only roads vested in the Municipal Commissioners.

**Obstruction to the safe and convenient passage along any house-gully, etc.:**—the words in the corresponding section of the Bengal Act, sec. 204 are "obstruction to the safe and convenient passage along any road." Under the present section it is sufficient if the projection, etc., is an obstruction to the safe and convenient passage along any house-gully only and it is sufficient if the projections, etc., obstruct, project or encroach into or upon any property vested in the Commissioners which according to sec. 58 includes roads and all other municipal properties. See the cases of *Bagshaw vs. Buxton* Local Board L.R. 1 Ch. D. page 220 and *Ollivant vs. Rahimtulla and others*, 12 Bom. 474 and *The Ahmedabad Municipality vs. Manilal Udemath* 19 Bom. 212 cited above and the cases cited in the notes to sec. 196 ante.

Sec. 283 of the B. M. Act dealt only with projections, etc., placed or erected before, and sec. 204 dealt with projections, etc., placed or erected, after the dates on which the District Municipal Act 1864 or the District Towns Act

1868 the Bengal Municipal Act 1878 came into force in the municipality or in these notes of the said Acts were in force then after the extension of the B. M. Act 1884 to the Municipality. Under the present Act none of these distinctions are material because sec. 202 entitles persons to compensation only if the projections, etc., was in existence either for more than 5 years or from before the Municipality was constituted whichever was the shorter and convenient period for them to show. See notes to sec. 203 post.

In a Bombay case under the District Municipal Act (Bombay Act VI of 1878) it was held that a municipality had power to regulate or control the construction of balconies projecting over private streets. *Tribhuban Chunilal vs. The Ahmedabad Municipality*, 27 Bombay 221.

In the absence of a definite finding that a piece of *patit* land or orchard adjoining the accused's house was held and engaged along with the house or as a part of the premises a heap of broken pottery stacked on the road and in front of the *patit* land or orchard could not be regarded as an obstruction placed against or in front of the accused's house within sec. 204 of the B. M. Act. *Bhushan Chandra Dutta vs. Chairman of Kote Chandpur Municipality*, 22 C.W.N. 876.

A person who has without any objection on the part of the Municipality encroached over the surface of a municipal street by a projection has no right to run up the projection to any height he likes even though he does not thereby make any further encroachment in breadth over the street. *Rakhal Ch. Dey vs. Chairman of Suri Municipality*, 47 Indian Cases 806.

Requisitions under this section will issue under sec. 359 and they are to be served according to secs. 357 and 358.

Notices under this section can be questioned only by an appeal under sec. 378 and by no other means. The Commissioners can also proceed according to sec. 198. See notes thereto.

The period within which the requisition is to be complied with is 5 days under sec. 198.

No action can be taken under this section if sanction under sec. 180 has been given for the erection of a platform over a public road or drain.

Notice under this section is to be served on the owner or occupier of the house; and of the two he who actually erected the obstruction is punishable under sec. 202 (2). See the cases cited under sec. 196 ante.

Power of Commissioners to remove if notice not complied with.

receipt of the same,

198. If the person on whom a notice has been issued under section 196 or section 197 fails to comply with the requisition within eight days of the

or if where a notice has been posted up under subsection (2) of section 196, the building, wall, fence, rail, post or other obstruction or encroachment is not removed within eight days of the posting up of the notice,

the Magistrate may, on the application of the Commissioners, order that the obstruction, encroachment or projection be removed, or that the projection be altered, and thereupon the Commissioners may, notwithstanding anything contained in sections 359 to 363, remove such obstruction, encroachment or projection or alter such projection.

#### NOTES.

The section corresponds to secs. 202, 204 and 283 of the Bengal Municipal Act.

If after service of notice under secs. 196 or 197 the person does not comply with the requisition the Commissioners may either apply to the Magistrate for an order for removal of the obstruction, encroachment or projection or alteration of the projection, etc., and after obtaining such an order they may remove such obstructions, etc., or prosecute the person under sec. 202 (2); these are alternative remedies.

For non-compliance with the requisition in question the Commissioners usually proceed against the defaulting person by a prosecution under sec. 202(2) and after conviction by an order of the Magistrate remove the obstruction or encroachment, etc.; they may also instead of prosecuting have recourse to the latter procedure after the expiration of the period of the notice.

See *Chunilal Dutt vs. Corporation of Calcutta*, 11 C.W.N. 80 which supports the view that the municipal corporation can institute two different proceedings one for fine and the other for demolishing at different times.

'Magistrate' defined in sec. 3, cl. 12.

**May:**—The use of the word 'may' indicates that it is discretionary with the Magistrate to pass an order of demolition or not. It was so held in a case under a similar section, *vis.*, sec. 449 of the Calcutta Municipal Act, that it was discretionary with the Magistrate to pass an order of demolition or not and the High Court could interfere in revision if the order was not a fair or proper one under the circumstances. *Abdul Samad vs. The Corporation of Calcutta*, 38 Calcutta 287 = 3 C.L.J. 90 = 10 C.W.N. 182.

It is discretionary with the municipal magistrate to make or not an order of demolition under sec. 449 of the Calcutta Municipal Act. This discretion is to be exercised after receiving evidence and hearing the defence. *Chunilal Dutt vs. Corporation of Calcutta*, 11 C.W.N. 80.

**Notwithstanding anything contained in secs. 359 to 363:** The words "notwithstanding anything contained in secs. 359 to 363" mean that in spite of those sections the Commissioners without complying with them may apply to the Magistrate and have the encroachments or obstructions removed. No objections to the requisitions under secs. 196 and 197 can be made under sec. 360; against notices under secs. 196 and 197 an appeal to the Commissioners is provided. The appeal must be filed within the period of the notice and after it is disposed of then applications to the Magistrate is to be made. Until the appeal is disposed of the Magistrate will not pass any orders.

The period of the notice is fixed by this section at 8 days.

#### **Proceedings before the Magistrate.**

Proceedings under sec. 449 of the Calcutta Municipal Act (a similar section) are not instituted on 'complaint' nor is the demolition of unlawfully executed work a 'punishment' within the meaning of sec. 681, sub-sec. 1 of the Act (corresponding sec. 374 of this Act). In *re Corporation of Calcutta vrs. Keshab Ch. Sen and another*, 8 C.W.N. 142.

The municipal magistrate should exercise the discretion vested in him under secs. 449, 450 and 452 of the Calcutta Municipal Act with due regard to those rules with guide courts in granting injunctions—with this difference that he has also to consider whether or not a building ought to be demolished on the ground of its being a danger or obstruction to the public. *Chunilal Dutt vrs. Corporation of Calcutta*, 11 C.W.N. 80.

See also *Sarat Ch. Mukherji vrs. Corporation of Calcutta*, 14 C.W.N. 591.

An order under sec. 202 of the B. M. Act is a judicial proceeding and the High Court can revise it. Though a magistrate is bound to act judicially he is not debarred for that reason only from acting on a report made by a subordinate officer. A magistrate exercising his power under sec. 202 is not engaged in a criminal proceeding and as no procedure is prescribed by the section he would not be wrong in following so far as they seem applicable the provisions of the Code of Civil Procedure. But the Magistrate cannot make an order under the section without hearing the parties concerned. *The Nabadwip Municipality vrs. Purna Chandra Mukherji*, 29 C.W.N. 817=52 Calcutta 670=41 C.L.J. 611=88 I.C. 862=1925 Cal. 984 (A.I.R.).

**Magistrate's order:**—The order of the magistrate under this section will be made by him in his judicial capacity and the Commissioners shall be deemed to be persons bound to execute such orders of a magistrate. See sec. 201 post..

Section 202 of the B. M. Act gives a summary power for the removal of an obstruction or an encroachment on a road, drain, sewer or an aqueduct and its provisions cannot be applied where there is a dispute between any person and the municipality with regard to the title to any land. Such a dispute must be decided in the ordinary way by a Civil Court. An order made by a Magistrate under sec. 202 of the B. M. Act is a judicial proceeding and the High Court has power to revise such an order. *Alokemohan Saha vs. The Narayangunj Municipality*, 59 I.C. 137.

The magistrate passes the order under sec. 188 Cr. P. Code. Sec. 188 clause (2) Cr. P. C. prescribes that no order duly made by a magistrate under the section shall be called in question in any Civil Court.

An order passed by a magistrate for the removal or suppression of nuisances under chapter XX of the Code of Criminal Procedure cannot form the subject of a suit or be set aside by a Civil Court. *Oojulmoyee Dossee vs. Chandrakumar Neogy*, 12 W.R. 18 (F.B.).

**199. The costs incurred by the Commissioners in carrying out any work under section 198 shall be recoverable from the person by whom the obstruction, encroachment or projection was built, erected or placed, and, if such person is not known or cannot be found, the Commissioners may recover such costs by sale of the materials removed and shall credit the surplus sale-proceeds, if any, to the municipal fund, to be paid on demand to any person who establishes his right to the satisfaction of the Commissioners or in a Court of competent jurisdiction.**

Recovery of costs  
of removal.

#### NOTES.

The section corresponds to secs. 203 and 204 of B. M. Act.

After the Commissioners get the order of the magistrate under sec. 198 for the removal of the obstruction, encroachment or projection they can remove the obstruction, etc., and recover the costs of the removal or alterations from the person by whom the obstruction, etc., was caused, and in case the person causing the obstructions, etc., is not known or cannot be found then the Commissioners may recover the costs by sale of the materials removed. The costs are recovered by issuing demand notice under sec. 123 and in case of failure of payment after receipt of it, they are levied by distress and sale of the moveable properties of the defaulter (sec. 123). The method of realisation of costs are the same as those laid down for realisation of taxes. See sec. 868 post. The procedure for sale of the materials can be adopted by the Commissioners only if the person causing the

obstruction, etc., in case of a notice under sec. 196, or the owner or occupier in case of a notice under sec. 197, is not known or cannot be found and if there be a surplus it is credited to the municipal fund and paid over to the rightful owner if any later on.

**296. No person shall be entitled to compensation in respect of the removal or alteration of any building, wall, fence, rail, post, projection, obstruction or encroachment under section 196, 197 or 198 unless it be proved that the projection, building, wall, fence, rail, post, encroachment or obstruction has existed for more than three years, or before the Municipality was constituted, whichever period may be less, in which case the Commissioners, on application being made to them in this behalf, may order reasonable compensation to be paid to any person who suffers damage by reason of any removal or alteration under the aforesaid sections. In determining the amount of compensation, the value of the land shall not be taken into consideration.**

Compensation for removal of obstructions.

#### NOTES.

The section corresponds to secs. 202, 204 and 233 of B. M. Act.

“ The Bengal Act makes a distinction between an old and new encroachment (secs. 202 and 233) permitting compensation for removal of an encroachment which existed before the town became a municipality. The difficulty has arisen that the courts almost invariably presume that an encroachment is old until the contrary is proved and it is in most cases impossible to obtain evidence to rebut the presumption. It is much more satisfactory to prescribe a fixed term of 12 years, except in cases where a municipality has been in existence for less than that time.” Notes on clauses para. 84.

The words in the section as it stood in the original Bill of 1921 ran thus: “ No person shall be entitled to compensation in respect of the removal of any building, wall, etc., unless it be proved that the projection, building, etc., has existed for more than twelve years, or before the municipality was constituted whichever period may be less, in which case the Magistrate may order reasonable compensation to be paid to any person who suffers damage, etc.” The Select Committee recommended that “ the power to award compensation should rest with the Commissioners, as in the present Act, not with the Magistrate.” Report of the Select Committee, para. 62. The Council accepted the recommendation but reduced the period of 12 years to one of 8 years.



The present section raises a presumption that an obstruction or projection is new, the burden of proving that the obstruction, etc., is in existence for more than 8 years or from before the creation of the municipality whichever is the shorter period is on the person who wants compensation; and on proof of either of these things the person is entitled to receive reasonable compensation from the Commissioners. Under the old Act the Courts used to start with a presumption that an encroachment was old until the contrary was proved by the municipality. The section empowers the Commissioners to award reasonable compensation to the person who suffers damage by their actions; the amount of compensation is not to depend on the value of the land which will have to be left out of consideration altogether in fixing the amount, but will depend only on the actual damage suffered by the person.

If any dispute regarding the amount or apportionment of the compensation payable by the Commissioners under this section arises then the matter shall have to be ascertained and determined by a competent Civil Court. See sec. 379 post.

Sec. 63 relates to land acquired under the Land Acquisition Act and the compensation is settled and paid thereunder; and sec. 379 relates to the other cases in which the Commissioners are required by the Act to pay compensation and there is a dispute as to the amount or apportionment and the present section relates to payment of compensation for removal of obstruction, etc. If the party refuses to accept the amount of damages or compensation determined by the Commissioners to be payable he can sue for the amount he claims.

**201. Every order made by the Magistrate under section 198 shall be deemed to be an order made by him in the discharge of his judicial duty, and the Commissioners shall be deemed to be persons bound to execute such orders of a Magistrate within the meaning of the Judicial Officers Protection Act, 1850.**

Effect of order made under section 198

## NOTES.

This section corresponds to section 205 of the B. M. Act.

Judicial Officers Protection Act is Act XVIII of 1850 and it was intended for the greater protection of magistrates and others acting judicially, sec. 1 ran as follows: "No Judge, Magistrate, Justice of the Peace, Collector or other person acting judicially shall be liable to be sued in any Civil Court for any act done or ordered to be done by him in the discharge of his judi-

cial parties whether or not within the limits of his jurisdiction: provided that he at the time, in good faith believed himself to have jurisdiction to do or order the act complained of: and no officer of any Court or other person bound to execute the lawful warrants or orders of any such Judge, Magistrate or Justice of the Peace, Collector or other person acting judicially shall be liable to be sued in any Civil Court, for the execution of any warrant or order, which he would be bound to execute, if within the jurisdiction of the person issuing the same."

The Magistrate—defined in sec. 8(12). See notes thereto.

The Magistrate passes the order contemplated by sec. 198 under sec. 188 Cr. P. Code and sec. 188(2) prescribes that no order duly made by a magistrate under this section shall be called in question in any Civil Court.

An order passed by the Magistrate under Chapter XX of the Cr. P. Code (Act XXV of 1861) cannot form the subject of a suit or be set aside by the Civil Court. *Oojulmoyee Dossee vrs. Chunder Kumar Neogy*. 12 W.R. 18 (F.B.)

Sec. 202 of the Bengal Municipal Act gives a summary power for the removal of an obstruction or encroachment on a road, drain, sewer, aqueduct and its provisions cannot be applied when there is a dispute between any person and the Municipality with regard to the title to the land. Such a dispute must be decided in the ordinary way by the Civil Court. An order made by a magistrate under sec. 202 of the B. M. Act is a judicial proceeding and the High Court has power to revise such order. *Alokmohan Saha vrs. The Narayangunj Municipality*, 59 I.C. 187.

Power to require  
landholders to trim hed-  
ges, etc.

**202. The Commissioners may by notice require the owner or occupier of any land, within a period to be specified in the notice, to trim or prune to the dimensions specified in the notice the hedges thereon bordering on any public road, and to cut and trim in the manner specified in the notice any trees thereon overhanging any public road or stand, or any well used for drinking purposes, or obstructing any public road or causing, or likely to cause, damage to any public road or any property of the Commissioners, or likely to cause damage to any person using any public road, or fouling or likely to foul the water of any well or tank.**

#### NOTES.

Corresponding sec. 208 of B. M. Act.

**Owner or occupier:—**" These words will be sufficient to leave no doubt who is responsible for carrying out the requisition. But it was held in Eng-

land in *Woodard vs. Billericay Highway Board* (1879) 11 Ch. D. 214, which dealt with the lopping of trees overhanging a highway, that the word 'owner' alone includes the occupier in matters of this sort, for every man in occupation of land has a kind of limited ownership in it." Justice Pargiter's B. M. Act 217. The trees overhanging any tank or any well the water of which is used for drinking purposes may be ordered to be cut or trimmed, and it does not matter that the well or tank is private and is not the property of the municipality. To give jurisdiction to the municipality to take action under this section in the case of a well the water of it must be used for drinking purposes and in the case of a tank whether the water is used for drinking purposes or not if the overhanging trees or branches are likely to foul the water.

The period of notice is not three days as prescribed by the corresponding section of the B. M. Act, but is left to be fixed by the Commissioners.

The procedure would be the same as in the case of notice under sec. 196 or 197. Requisitions would be issued under sec. 359 and in case of failure by the owner or occupier to comply with it the Commissioners may either have the work done by their own agents and recover the costs under sec. 388; or prosecute the owner or occupier under sec. 208(2).

Penalties for encroachments.

**203. (1)** Any person who erects or re-erects any such projection as is referred to in section 179 without the permission thereby required, or in contravention of any permission given thereunder, or who otherwise encroaches upon any road, house-gully, drain, aqueduct or water-course by making any excavation, or by erecting any wall, fence, rail, post or other obstruction, shall be liable to a fine not exceeding fifty rupees.

**(2)** Any person who fails to comply with a requisition issued by the Commissioners under section 196, 197 or 202 shall be liable to a fine not exceeding fifty rupees, and to a further time not exceeding ten rupees for every day during which the default is continued after the expiration of eight days from the date of service on him of such requisition.

#### NOTES.

Sub-section (1) corresponds to sec. 217 (5) of B. M. Act and sec. 210 of U. P. Act II of 1916 and sub-sec. (2) corresponds to sec. 218 of B. M. Act.

**Sub-sec. (1):**—the erection or re-erection of a platform extending over any public road or drain without the previous sanction or in contravention of the sanction given by the Commissioners is made punishable by this

section. So also any encroachment upon any road, house-gully, drain, sewer, aqueduct or water-course either by making any excavation or by erecting any wall, fence, rail, post or other obstruction is made punishable.

This clause has reference to the conditions noticed in secs. 196 and 197 and is applicable to persons who actually and purposely commit the offence.

The obstruction referred to in sec. 57 of Act III of 1864 (B.C.) (a similar section) meant an obstruction raised purposely by the party. The obstruction of a drain by a tree blown down by a cyclone was not an obstruction within the meaning of sec. 57. Anon 3 W. R. Cr. 38.

Road is defined in sec. 3(24). House-gully in sec. 3(10). Drain in sec. 3(6). See notes to those sections.

Roads according to the definition under this Act includes all roads within that description though they may not have become vested in the Municipality under sec. 58.

The term 'road' in clause 5 of sec. 217 of Bengal Act III of 1884 is not limited to roads vested in the Municipal Commissioners. A person was charged at the instance of the municipality with obstructing a path through his paddy field by erecting a fence at either end of it. It was found that the public had a right of way over the path and the lower courts convicted the accused of an offence under that clause. In revision it was contended that the conviction was bad as the clause could only refer to a road which had vested in the municipal Commissioners. The High Court held for the above reasons that the conviction was right and must be upheld. In the matter of Ram Ch. Ghosh *vs.* the Bally Municipality, 17 Calcutta 684. See also the case of the Chairman of the Howrah Municipality *vs.* Haripada Dutt 43 Cal. 180=20 C.W.N. 613 and the case of Mewa Sonar *vs.* Emperor 15 C.W.N. cxi.

Where the petitioner was convicted under sec. 217 of B. M. Act for encroaching on a public road, upon a finding that the road in question, which was given a name by the municipality, was made over the petitioner's land to a trenching ground and so used for sometime and was subsequently given up with the closing of the trenching ground it was held that the road was originally used for a temporary purpose and the petitioner never intended it to be used permanently. There was no evidence of dedication and the facts were not sufficient for the conclusion that the road was a public one. Nandalal Neogy *vs.* Bijoy Chandra Chatterji 22 C.W.N. 599=46 I.C. 518.

The prosecution will be according to sec. 375.

**Sub-sec. (2)** :—corresponds to sec. 218 of B. M. Act.

Under sub-sec. (1) the mere erection of the encroachment, etc., is made punishable; under this sub-section the person who is liable for the encroachment, obstruction or projection, etc., and who fails to comply with the requisition issued under sec. 196 or 197 is made liable to punishment and to a further penalty in case of continued default.

Where a requisition under sec. 196 or 197 is disregarded the Commissioners can prosecute under this clause and in such a case the criminal court must have to see whether there has been an encroachment, etc., which the accused was bound to remove on the orders of a Municipal authority.

A notice was issued under sec. 215 Bengal Act V of 1876 (a section similar to secs. 202 and 204 of B. M. Act) requiring A to remove an alleged obstruction. The requisition was not complied with and A was prosecuted for non-compliance therewith, under sec. 216 (cor. to sec. 218 of B. M. Act) before a Bench of Honorary Magistrate; the Magistrate being of opinion that there had been no encroachment discharged the accused, on a reference to the High Court by the District Magistrate it was held by J. Prinsep and J. O'Kinealy that the Court had power to inquire whether the alleged obstruction was in point of fact, an obstruction or not. In the matter of the Municipal Committee of Dacca *vs.* Someer, 9 Cal. 38.

Although this ruling is one under the old Act the principle seems to be applicable to cases under this clause.

**Notice:**—the notice on non-compliance with which the prosecution is started must be served upon the person who has erected the obstruction, etc., and on failure to comply with such requisition, he alone is liable to a prosecution.

So where a wall and a privy were erected by the lessee and not by the owner of a land who repeatedly asked that the requisition should be served on the lessee, the lessee alone is liable to a prosecution for non-compliance with a requisition issued to remove such wall and privy. *Shama Bibee vs. Jadab Chandra Banerji*, 2 C.L.J. 226. See also the notes to secs. 196 & 197.

The day on which the requisition is served must be excluded and the period does not terminate till the expiry of the last day of it. Where a definite period is appointed for the doing of some act, the day on which the order is given must be excluded and the last day of that period must be fully reckoned, so that the period does not terminate till the beginning of the following day.

The prosecution will be under sec. 375.

**Daily fine.** The mere refusal or failure to comply with a requisition under sec. 196 or 197 or 202 constitutes an offence and there can be a con-

victim for the simple reason irrespective of any *mens rea*. For an act or omission made punishable by the Act and for breach of any statutory duty or obligation, no *mens rea* is necessary.

**Continuing offence:—**“ The failure to comply with the requisition within the period fixed is one offence, and the continued default is a separate offence. It is illegal for a magistrate, when convicting a person of the primary offence, to impose a fine in anticipation, for every day during which the offence may be continued after the conviction, for the imposing of a daily fine prospectively is illegal, inasmuch as it is an adjudication in respect of an offence which has not been committed when such order is passed.” J. Pargiter's B. M. Act, page 224.

A sentence of a daily fine in anticipation, in the case of a continuing offence, which may be committed after the date of the proceeding in which it was passed is illegal. *Nilmoni Ghatak vs. Emperor*, 37 Cal. 671.

A court should not impose a daily fine in anticipation of commission of an offence in future, e.g., the continuance of an encroachment, obstruction or nuisance contemplated under sec. 2 (2) of the Patna District Board By-laws. *Panchan Sao vs. King-Emperor*, 6 P.L.T. 204.

See also the cases noted under sec. 103 *ante*.

**Procedure for infliction of daily fine:—**It was pointed out in a Bombay case, where a Presidency Magistrate having convicted certain accused persons and fined them under sec. 471 of the City of Bombay Municipal Act (Bom. Act III of 1888) proceeded in the same order purporting to act under the provisions of sec. 472, to fine them so much per day in case they continued the offence; it was held that the latter order was illegal under sec. 472 of the Act. The section required a separate prosecution for a distinct offence, a prosecution in which a charge must be laid for a specific contravention for a specific number of days and for which charge, if proved, the Magistrate is to impose a daily fine of an amount which is left to his discretion to determine. In *re Limaji and others*, 22 Bom. 766.

In a case under the Calcutta Municipal Act it was laid down that sec. 580 of the Calcutta Municipal Act created the offences, both the primary offence consisting of default in carrying out an order under sec. 449 and the secondary or continuing offence committed on each day thereafter by reason of the continuance of the default. When an order under sec. 449 was made on the 8th September for demolishing a building within three months, the primary offence of non-compliance with that order was complete on the 8th December. After that, every day's default in carrying out the order became a distinct offence under sec. 580. Consequently where summons was issued against the offender for such continuing offence on the 6th of May following,

on a complaint made on the 10th of March the prosecution could not be regarded as barred by limitation under sec. 681 of the Act. No fresh order under sec. 449 was necessary for authorising the imposition of a daily fine for such continuing offence, the omission in the summons to specify the days of default not having prejudiced the defence. *Noni Lal Sett vrs. Corporation of Calcutta*, 7 C.W.N. 858.

If the offence continues, a fresh prosecution ought to be instituted. The correctness of the first conviction cannot be challenged in the second or subsequent trial. *Sital Prasad vrs. Municipal Board of Cawnpur*, 36 All 480. See also *Corporation of the Town of Calcutta vrs. Mattoo Bewah*, 13 Cal. 108.

**Limitation.** The offence provided for in the section is the failure to comply with a requisition and is of a continuous nature. Limitation against a prosecution for such offence therefore begins to run from the time when the failure to comply with the requisition is first brought to the notice of the Chairman. *Lutti Singh vrs. The Behar Municipality*, 1 C.W.N. 492.

A prosecution under sec. 218 of the B. M. Act for failure to comply with a requisition under sec. 202 and 203 is within time if instituted within six months from the expiry of the time allowed for compliance with the order under the latter section. *Gulam Rasul vrs. King-Emperor*, 6 P.L.J. 174.

The accused was served with a notice by the municipality requiring him to remove a fence which was said to be an obstruction. The accused preferred an objection, whereupon the Chairman passed an order to move the District Magistrate for the prosecution of the accused. He was then tried and convicted under sec. 218 it was held that there was a compliance with secs. 175, 176 of the Act but not with secs. 178, 179 (regarding the communication of the orders passed on the objections). There being thus a failure to observe the essential preliminary steps before an application could be made to the Magistrate under sec. 202 (sec. 198) the proceedings were without jurisdiction. *Nobin Chandra Aich vrs. Noakhali Municipality*, 21 C.W.N. 470.

See also in this connection the case of *Bhusan Chandra Dutt vrs. Chairman of Kote Chandpur Municipality*, 22 C.W.N. 376 where it was held that in the absence of a definite finding that a piece of *patit* land or orchard adjoining the accused's house was held and engaged along with the house or as a part of the premises, a heap of broken pottery stacked in the road and in front of the *patit* land or orchard could not be regarded as an obstruction placed against or in front of the accused's house within sec. 204 of the Bengal Municipal Act.

## CHAPTER VI. CONSERVANCY AND DRAINAGE.

### Removal of Sewage, Offensive Matter and Rubbish.

Duties of Commissioners in relation to conservancy.

**204. It shall be the duty of the Commissioners to provide for the removal and disposal—**

- (a) of sewage, offensive matter and rubbish from all public latrines, urinals and drains, all public roads and all other property vested in the Commissioners, and**
- (b) in any municipality wherein a latrine tax has been imposed under section 82, of sewage, and offensive matter, from all private latrines, urinals and cesspools,**

**and for the cleansing of such latrines, urinals, drains and cesspools, and to maintain sufficient establishments, cattle, carts and implements for the said purposes.**

### NOTES.

The section corresponds to sec. 320 of B. M. Act.

“ The Commissioners are hereby required to keep municipal property clear of sewage, offensive matter and rubbish, and where a conservancy tax has been imposed, private latrines, urinals and cesspools clear of sewage and offensive matter. The definition of “ sewage ” has been enlarged to include polluted water from kitchen, sinks, bath-rooms and stables.” Notes on Clauses p. 85.

The Commissioners have to keep all public latrines, urinals and drains all public roads and other municipal properties clear of sewage, offensive matter and rubbish even if no latrine tax is imposed in the municipality but if a latrine tax is imposed they must also keep clean all private latrines, urinals and cesspools.

Sewage is defined in sec. 3 (28). Offensive matter in sec. 3 (25) and rubbish in sec. 3 (16). See notes to those sections.

The Inspector of Factories having found the latrines of the Hastings Mill within the Serampore Municipality in a filthy state instituted a prosecution against the Manager of the mill but the prosecution failed. He then prosecuted, as representing the municipal Commissioners of Serampore, the Chairman of the Municipality who on conviction was fined Rs. 200 for “ neglecting to keep the Factory free from effluvia arising from a privy ” under the provisions of the Factories Act and the Bengal Municipal Act sec. 320 the reasons of the conviction being that the municipality had undertaken



to maintain an establishment for the cleansing of the public and private latrine; on revision against the conviction it was held that the conviction of the Chairman was unsustainable on the finding that the municipality and the occupier were jointly responsible. The provisions of sec. 17 of the Factories Act by virtue of which the conviction was had against the Chairman is of a highly penal character and must be construed strictly in favour of the accused; in order to fix liability on any person other than the occupier of a factory it is incumbent upon the latter to give the strict proof of the circumstances exonerating himself and it is plain on the face of the section that the burden of proving absence of knowledge or consent on his part lies entirely upon him. The Manager of the factory in the circumstances ought not to have been discharged as he was the proper person to be prosecuted under the Factories Act and not the Chairman. Chairman of the Serampore Municipality *vs.* Inspector of Factories, Hooghly, 25 Cal. 454.

Control over conservancy establishment.

**205. (1) The Commissioners at a meeting may make an order requiring all persons employed in the removal of sewage within the limits of the municipality, or any part thereof, to take out licences, and to be servants of the Commissioners for the purpose of removing sewage from premises within the said limits; and may grant such licences subject to such conditions as they may think fit, and may impose fees in respect of the same.**

**(2) The Commissioners at a meeting may make rules subject to the approval of the Local Government, to define the duties of such persons, and from time to time may alter, add to or repeal such rules; and any breach of such rules shall subject the offender to a forfeiture of licence and to a fine not exceeding twenty rupees.**

#### NOTES.

Corresponding section 381 of the B. M. Act.

The Commissioners at a meeting may require all persons employed in the removal of sewage in the municipality or in a portion thereof to be their servants and to take out licenses from them for the purpose. In all municipalities there are people who are not their servants but who do privately the work of cleansing latrines, etc., and by this clause the Commissioners at a meeting can require them to be their servants and to take out licenses for the purpose.

**Servant of the Commissioners:**—defined in sec. 9 (27) means those who are in the pay and service of the Commissioners.

Section (2) empowers the Commissioners to make rules to define the duties of such persons taking out licenses.

**206. All servants of the Commissioners employed for the purposes of this Chapter may, within such hours as may be fixed by the Commissioners, enter on any premises of which the occupier or owner is liable to pay a latrine tax, and do all things necessary for the performance of their duties under this chapter.**

Power of conservancy establishment.

#### NOTES.

Section corresponds to sec. 330 of B. M. Act.

Power to prescribe times and manner of removal of sewage.

**207. The Commissioners at a meeting may from time to time publish an order prescribing the hours within which and the manner in which sewage and and offensive matter may be removed.**

#### NOTES.

Sec. corresponds to sec. 187 of B. M. Act.

The Commissioners at a meeting can regulate the hours within which and the manner in which sewage can be removed. This section applies in all cases whether any latrine tax has been imposed or not within the municipality. See sec. 208. The Commissioners by acting under this section can change the hours within which the sewage is to be removed.

Deposit and removal of sewage and offensive matter in certain municipalities.

**208. In any municipality wherein a latrine tax has not been imposed, the Commissioners may provide places convenient for the deposit of sewage and offensive matter and may require the occupiers of houses to cause the same to be deposited daily or at other stated intervals in such places, and may remove the same at the expense of the occupier from any house if the occupier thereof fails to do so as required by this section.**

#### NOTES.

The section corresponds to sec. 187 of B. M. Act.

This section empowers a municipality in which latrine tax has not been imposed, to provide places for the deposit of sewage and offensive matter and the like, at which private persons will deposit from their holdings and which the Commissioners will remove at their own expense. If the occupier fails to remove the offensive matter from his holding to the appointed place the

Commissioners can have it done by their own agency but at the expense of the occupier. From the places where the offensive matters are deposited the Commissioners will remove them to the trenching ground.

**209. (1) The Commissioners at a meeting may from time to time publish an order prescribing the hours within which an occupier of any house or land may place rubbish on the public road adjacent to his house or land in order that such rubbish may be removed by the Commissioners.**

Appointment of hours for placing rubbish on public road.

**(2) Any person who places or allows his servants to place rubbish on a public road at other than the times appointed by the Commissioners under sub-section (1) shall be liable to a fine not exceeding twenty rupees.**

#### NOTES.

Sub-sec. (1) corresponds to sec. 189 of B. M. Act and Sub-sec. (2) cor. to sec. 216 of B. M. Act.

This section applies not to offensive matters but to rubbish which the occupier of any house or land may deposit on the public road near the holding from which it will be removed by the Commissioners. To prevent rubbish lying on the public road for a considerable length of time to the inconvenience of the public and injury to public health the Commissioners can fix the hours within which the rubbish is to be deposited and its speedy removal effected.

The penalty for infringement is provided in sub-sec. (2). See sec. 374 as regards the prosecution and realisation of the penalty.

Rubbish defined in sec. 3 (25) *ante*.

The Bengal Act secs. 189 & 216 contained the word "penalty" & not 'fine' as in the present section.

There was no distinction between the term "penalty" as used in the Bombay District Municipal Act (Act VI of 1873) and the word "fine" as used in sec. 64 of the Indian Penal Code. Imprisonment could therefore be awarded in default of any penalty inflicted under sec. 84 of the Bom. Municipal Act. In re Lakmia, 18 Bom. 400.

Imprisonment could be awarded in default of fine imposed under the Bom. Act. Reg. *vs.* Gulalchand, B.H.C. Cr. Rules dated 21st June, 1875. The act of placing rubbish on a public road in contravention of the orders of the Commissioners may also amount to an offence of committing a public nuisance under sec. 268 I.P.C. and be punishable under sec. 290

**I.P.C.** A man may be prosecuted under this sub-sec. (2) or under sec. 290 I.P.C. but not under both. But the Commissioners have only the power of ordering prosecution for offences committed against the Municipal Commissioners but not of directing prosecution under the Indian Penal Code or any other law.

The Municipal Act is intended to be complete in itself as regards offences committed against the Municipal Commissioners and there is no indication of any intention to render a delinquent also liable to punishment under the Penal Code. The Municipal Commissioners have their remedy under the Act itself. *Chandi Pershad vs. Abdur Rahman*, 22 Cal. 131.

In a Madras case, *Perumal vs. Municipal Commissioners for the City of Madras*, 23 Mad. 164, it was held that the dust-bin was not a part of a street and the throwing of stable-refuse in it was not a deposit of such refuse in the street so as to constitute an offence under the said section 307 of the City of Madras Municipal Act (Act I of 1884) [which sec. is exactly similar to the present section.]

The occupier is liable not only for his own acts but also for those of his servants. See also sections 211 & 212 where the occupier is made liable for the acts of his servants also.

**210. The Commissioners may charge such fees as they think fit in respect of the removal, with the consent of the occupier, of rubbish from any house or land, or in respect of the removal from the public road of rubbish which has accumulated in the exercise of a trade or business.**

Fees for removal of rubbish.

#### NOTES.

Corresponding sec. 189 of B. M. Act.

The Commissioners may agree with the owner to remove excessive quantity of rubbish which would naturally be thrown out regularly in the course of the trade or business carried on in the holding and may charge reasonable fees for it.

**Consent:**—does not apply to the charging of fees but to the removal of rubbish from any house or land; the Commissioners are empowered by the section to enter into this particular kind of contract.

**Rubbish:**—defined in sec. 3 (25).

**211. Any person who, being the occupier of a house in or near a public road within a municipality, keeps or allows to be kept, for more than twenty-four hours, or for more than such shorter time as**

Penalty for not removing offensive matter from or near road.

may be determined by a by-law, otherwise than in some proper receptacle, any dirt, dung, bones, ashes, night-soil or filth or any noxious or offensive matter in or upon such house, or in any out-house, yard or ground attached to and occupied with such house, or suffers such receptacle to be in a filthy or noxious state, or neglects to employ proper means to cleanse the same, shall be liable to a fine not exceeding fifty rupees.

### NOTES.

Corresponding sec. 211 (1) of B. M. Act.

This section applies to occupiers of houses on public roads and not on private roads. The construction of private roads and the cleansing of them are governed by secs. 164 to 170 which are borrowed from secs. 203 to 208 of the U. P. Act II of 1916 and sec. 90 (3) & (5) & sec. 91 (4) of Bombay Act III of 1901. In the Bengal Act there were no sections corresponding to secs. 164 to 170 of this Act and this Act seems to make a distinction between private roads and public roads. The section seems to imply that proper receptacles will have to be provided, kept clean and in sanitary condition by occupiers of houses on public roads.

**"Offensive matter."** :—defined in sec. 3 (16). The word "offensive" here seems to be used in its ordinary sense. From the matters particularised and a comparison of the definitions in secs. 3 (16), (25) and (28) this section seems to comprise all "offensive" matters, "sewage" and partly "rubbish."

The period for which the offensive matter may be kept in or near a public road is limited to 24 hours or such shorter period as the Commissioners may fix by by-laws.

**Occupier liable :**—Under this section it is only the occupier who is liable.

The father and the son being proprietors of a tiled hut let it out on hire to one Chunder Kumar who took possession of the house and kept some horses and carriages. The municipal authorities then prosecuted the father and son for having kept or suffered to be kept offensive matters otherwise than in a proper receptacle and they were convicted under secs. 307 & 326 of the Calcutta Municipal Act (sections corresponding to the present section). On revision it was held that the conviction was bad, the lessee alone being answerable in such a case for disregarding the provisions of the Act. *Abhoy Charan Das & another vrs. Municipal Ward Inspector*, 25 Calcutta 625.

It is no valid excuse for a man who is bound by law to keep his ground clean to say: "I did not make it dirty, but somebody else did it." *Anon (1868)*, 3 W.R. Cr. 88.

A is punishable if his land is made filthy by other persons. But if A has ~~sublet~~ his land to others the actual occupiers of the land are liable. *Queen vs. Parbati Charan Sarkar*, 3 W.R. Cr. 57.

The occupier who suffers the land to be in a filthy state is the person liable for the penalty. *Queen vs. Braj Lal Mitter*, 8 W.R. 45 Cr. See also *Queen vs. Dwarakanath Hazra*, 16 W.R. 60 Cr.

The occupier is liable under the section for his own act as also for the acts of his servants.

Penalty for allowing sewage, offensive matter or rubbish to be thrown or run into road or drain.

**212. Any person, who, within a municipality—**

**(1) without the permission of the Commissioners, throws or puts or permits his servants to throw or put any sewage or offensive matter upon any road, or who throws or puts, or permits his servants to throw or put any earth, rubbish, sewage or offensive matter into any sewer or drain belonging to the Commissioners, or into any drain communicating therewith; or**  
**(2) causes or allows the water of any sink, sewer or cesspool, or any other offensive matter belonging to him or being on his land, to run, drain or be thrown or put upon any road, or causes or allows any offensive matter to run, drain or be thrown into a surface drain near any road in such a manner as to cause a nuisance,**  
**shall be liable to a fine not exceeding twenty-five rupees.**

**NOTES.**

The section corresponds to sec. 270 of B. M. Act.

**Clause 1.** The Commissioners may permit people to deposit sewage or offensive matter upon any road; or to deposit or throw, earth, rubbish, sewage or any offensive matter into any sewer or drain or into any drain communicating with a public drain or sewer from which they will remove them by their own servants. These deposits can only be made with the written permission of the Commissioners.

The owner is made liable for his own acts as also for the acts of his servant.

"Sewage" is defined in sec. 3 (28), "offensive matter" in sec. 3 (16) and "rubbish" in sec. 3 (25).

**Drain belonging to the Commissioner:—**Drain is defined in sec. 3 (6). The drain referred to in this clause is a public drain vested in the municipality and not a private drain. See *Mahesh Ch. Panday vs. Basanta Kumar*

Das, 10 C.W.N. 667 quoted in extenso below. But if the drain communicating with a public drain is a private one the portion of it joining it with a public drain would come within the purview of this section and without permission any deposit of sewage or offensive matter in it would be punishable.

**Clause 2.** Any person who causes or allows the water of any sink, sewer or cesspool or any other offensive matter belonging to him or being on his land to run, drain or be thrown into a surface drain near a road in such a manner as to cause a nuisance is punishable under this clause. The clause requires every person to keep his offensive matter from running on to a road or into a surface drain near any road. See the case of 15 Madras, 91 cited below.

The Municipal Commissioners cannot permit people to do any of the acts mentioned in this clause as the effect of granting such permission would be to promote nuisances.

**Cesspool:**—The common meaning of the word is a pit in which a drain discharges its contents. The word "drain" means not merely a water channel but a channel used for the flow of offensive matter. Before a channel can be called a drain within the meaning of the B. M. Act it must be shown that offensive matter is carried by it and before a pit at the end of such a channel can be called a "cesspool" it must be shown that offensive matter is discharged into it. *Kasipaty Mukherji vs. Chairman, Puri Municipality*, 40 I.C. 552=1 P.L.W. 774.

The road or surface drain referred to in clause (2) is a road or a surface drain belonging to the municipality. This clause (2) has to be read along with the first clause of the section and in construing it we must not overlook the fact that it finds a place in the Bengal Municipal Act. The only reasonable construction which can be put upon it is that the road or drain to which reference is made in the section must be a road or drain belonging to the municipality. It could not have been intended by the Legislature to authorise any municipality to interfere with the user of any private drain by a private individual. *Mahesh Ch. Pandey vs. Basanta Kumar Das*, 10 C.W.N. 667.

An occupier of a building, who allowed sewage water to run into a street within the limits of a municipality governed by the District Municipal Act of Madras (Act IV of 1864) was charged under section 222 of the Act but was acquitted on the ground that no side drains having been provided the accused could not escape allowing the water to run into the street for want of any other place of discharge. On the case being reported to the High Court for

order. It was held that the ground of decision was based on an error of law. The Legislature had not made the providing of drains by the municipality a condition precedent to the obligation imposed upon the owner or occupier. The municipality is not bound to make drains whereas every owner or occupier is bound to keep his offensive liquid matter from running into the street. If drains are provided the owner or occupier may apparently discharge offensive liquid matter into them provided that in doing so he avoids causing a nuisance by allowing such liquid matter to be soaked into the walls or ground. *Queen Empress vrs. Sevudappayyar and others*, 15 Madras 91.

Rice water is in itself not an offensive thing although if allowed to stagnate it becomes offensive in time. A cistern for the collection of rice water from a kitchen is not a cesspool. *Kasipaty Mukherji vrs. Chairman, Puri Municipality*, 40 I.C. 552=1 P.L.W. 774.

Rain water cannot possibly be called offensive matter.

According to the Bombay High Court a person did not render himself liable to a penalty under sec. 54 [same as clause (2) of the section] of Bombay Act VI of 1873 for allowing mere waste or dirty water to run from his premises on to a public street unless the water was offensive. In *re Golap Das Bhai Das*, 20 Bombay 83.

**In such a manner as to cause a nuisance:**—Simply allowing some fluid matter to run into a road or surface drain near a road is not contemplated by the section, but the causing of nuisance by so doing is made punishable. In the case of water from a sink, sewer or a cesspool the allowing of such water to run into the road would certainly cause nuisance but in the case of other liquid matters the drainage of some of them as bathing water, rice water or rain water into the surface drain or a road may be the only way of preventing nuisance and these acts would not come within the purview of this section.

#### LATRINES, URINALS, CESSPOOLS AND RECEPTACLES FOR SEWAGE, OFFENSIVE MATTER AND RUBBISH.

**213. The Commissioners may provide and maintain, in sufficient numbers and in proper situations, public latrines and urinals for the separate use of each sex, and shall cause the same to be kept in proper order and to be properly cleansed.**

Power to provide public latrines and urinals.

#### NOTES.

Corresponding section 198 of B. M. Act.

Under sec. 69 when a latrine tax is imposed under sec. 82 (e) for a municipality, the cost of providing and maintaining and cleansing of public



latrines, urnals, etc., are to be met out of the monies realised as latrine tax. If no latrine tax is imposed then the expenses under this head must form a part of the general expenses of the municipality; as was the case when the Bengal Municipal Act was in force.

Enclosure of private  
latrines and urinals.

**214. (1) Every person constructing a latrine or urinal shall have such latrine or urinal shut out by sufficient roof and wall, or fence from the view of persons passing by, or residing in, the neighbourhood.**

**(2) Any person who contravenes the provisions of sub-section (1) shall be liable to a fine not exceeding twenty rupees.**

#### NOTES.

Sub-sec. (1) corresponds to sec. 225 of B. M. Act and sub-sec. (2) corresponds to secs. 266 & 271 of B. M. Act.

If the person constructing a latrine or urinal does not keep it shut out by a sufficient roof and wall or fence from the view of passers-by or neighbours, then the Commissioners may either prosecute him under sub-sec. (2) or by a notice under sec. 217 (1) (c) compel the man to cause them to be shut off by roof and wall or fence from public view. The requisitions will have to be issued according to sec. 359 and the procedure laid down by secs. 360 to 364 will have to be followed; the notice is to be served according to sec. 357.

Permission for construction of latrine or urinal near road, tank or water-course.

**215. (1) No person shall, without the written permission of the Commissioners,—**

**(i) construct a latrine or urinal with a door or trap-door opening on to any road or drain;**

**(ii) construct or keep any latrine, urinal, cesspool, house-drain or receptacle for sewage or other offensive matter, within fifty feet of any public tank or water-course, or a tank or water-course which the inhabitants of any locality use.**

**(2) Any person who contravenes the provisions of sub-section (1) shall be liable to a fine not exceeding twenty-five rupees.**

#### NOTES.

Clause (1) (i) corresponds to sec. 281 of B. M. Act and clause (ii) corresponds to sec. 280 of B. M. Act. Sub-sec. (2) corresponds to sec. 270 cl. (3) of B. M. Act.

Clause 233 (sec. 217) gives the Commissioners power to order the removal of a latrine, urinal or other receptacle from the vicinity of a source of water-supply." Notes on Clauses, p. 87.

Contravention of the provisions of this section is punishable under sub-sec. (2). The Commissioners may in order to abate nuisances also take action under sec. 217 and require the owner or occupier to remove, repair, demolish a latrine, urinal, etc., and on disobedience or contravention of the requisition may have the demolition done by their own agency and recover the costs from the person and further prosecute the man under sec. 218 (2). See notes to sec. 218.

In the matter of granting permission for the construction of latrines, urinals, cesspools, etc., the Commissioners have absolute discretion and this power has been given to them simply to prevent insanitary conditions arising within any portion of the municipal limits. If written permission is not obtained beforehand, the construction of a latrine with a door or trap-door opening on to any road or drain or keeping of a latrine, etc., within fifty feet of a public tank or other source of water-supply, itself becomes an offence. The Commissioners have also been given powers to order the removal of latrine, etc., which in their opinion are most insanitary and are nuisances. See sections 217 and 218.

In a Bombay case it was held that the municipality had no authority to order the erection of a privy regardless of another person's rights and a person building a privy or latrine under such orders could not plead that they acted under their orders. *Saiyad Jafir Saheb and others vrs. Syed Kadir Rahaman and another*, 12 Bom. 634. There is also nothing in the section to indicate that they should be built or allowed to be built regardless of other peoples' rights.

" Road " and " drain " defined in sec. 3 (23) and (6).

" Sewage " and " offensive matter " defined in sec. 3 (28) & (16). For public tanks and water courses see sec. 58 (b) and for tanks and water courses which the inhabitants use see sec. 227.

The common meaning of the word " cesspool " is a pit in which a drain discharges its contents. See *Kasipaty Mukherji vrs. Chairman, Puri Municipality*, 40 I.C. 552=1, P.L.W. 774.

The offence under sec. 270 (3) viz., the construction of a latrine is not a continuous offence and a prosecution for such an offence must be brought within 3 months of the date from which such commission is brought to the knowledge of the Chairman. The service of the requisition on the accused as well as the requisition itself should be proved and found before there can

be a conviction. *Bidhubhushan Mullick vs. The Asansol Municipality*, 3 C.W.N. 167.

Powers of Commissioners to inspect latrines, urinals, etc.

**216. (1) All latrines, urinals, cesspools and drains shall be subject to the control of the Commissioners, and the Commissioners or any officer authorized by them in that behalf may inspect any latrine, urinal cesspool, sink, drain or receptacle for sewage, or offensive matter or rubbish at any time between sunrise and sunset, after six hours' notice in writing to the occupier of the premises in which such latrine, urinal cesspool, sink, drain or receptacle is situated, and may, if necessary, cause the ground to be opened where they or he may think fit for the purpose of inspection or of preventing or removing any nuisance arising from such latrine, urinal, cesspool, sink, drain or receptacle.**

**(2) The expense of such inspection and of causing the ground to be closed and made good as before shall be borne by the Commissioners, unless the latrine, urinal, cesspool, drain or receptacle is found to be in bad order or condition, or to have been constructed in contravention of any provisions of, or made under, this or any other enactment, in which case such expense shall be recovered from the owner or occupier.**

#### NOTES.

The section corresponds to secs. 190 & 191 of B. M. Act and sec. 270 of U. P. Act II of 1916.

“ While under the Bengal Act the ground can be opened only for the purpose of preventing or removing a nuisance and the cost is then borne by the owner or occupier, it is proposed in this clause that power should be given to open the ground for the purpose of inspection and that the cost should be borne by the Commissioners unless some nuisance is found to exist.” Notes on clauses, para. 88. The cost of the filing up has to be paid by the owner or occupier only when the latrine or urinal, etc., is found to be causing nuisance. Sec. 368 prescribes how the costs are to be realised.

Powers of Commissioners to require repair, alteration, removal of latrine, etc.

**217. (1) The Commissioners may require by notice the owner or occupier of any land or building, within a period to be specified in the notice, to do all or any of the following things:—**

- (a) to close, remove, alter, repair, disinfect or put in good order any latrine, urinal, cesspool, drain or receptacle for sewage offensive matter or rubbish pertaining to such land or building,**

or to remove or alter any door or trap-door of any such latrine or urinal which opens on to a street or drain;

(b) to provide such latrines, urinals, cesspools, drains or receptacles for sewage, offensive matter or rubbish as should, in their opinion, be provided for the building or land, whether in addition or not to any existing ones;

(c) to cause any latrine or urinal provided for the building or land to be shut off by a sufficient roof and wall or fence from the view of persons passing by or dwelling in the neighbourhood.

(2) When requiring under sub-section (1) anything to be provided, altered or done, the Commissioners may specify in the notice the description of the thing to be provided, the pattern to conform with which the thing is to be altered, and the manner in which the thing is to be done.

#### NOTES.

The section corresponds to sec. 267 of U. P. Act II of 1916 and secs. 224, 231 & 332 of B. M. Act.

The use of the word "may" suggests that the section is not imperative but is an enabling provision, which empowers the Commissioners to abate nuisances, and a permissive one which leaves it to their discretion to determine when the power shall be exercised. With regard to buildings and lands in the condition contemplated by the section it is plain that people have no privilege to commit nuisances and it may be necessary to put this provision in force against them even if it should act harshly. See in this connection 20 Bombay 617 at page 622 cited below.

The question that certain works directed by the municipality are not necessary cannot be gone into by the Civil Court. The question of necessity or otherwise is left by the Legislature to the decision of the municipality and though a civil court can restrain a corporation from doing anything *ultra vires*, the question of necessity is not to be so decided. If the municipality decide that certain works are necessary the conclusion in the absence of *malafides* or fraud or considerations of the like nature cannot be challenged in the civil court. *Duke vs. Rameswar Malia*, 26 Calcutta 811.

In an Allahabad case the facts were that a municipal Board issued an order purporting to do so under sec. 267 (similar section) of the U. P. Municipal Act to a person living within the municipal limits requiring him to fill up a certain cesspool and to build another with a proper cover

to it and the order being issued because the cesspool was without a cover and passers-by were likely to fall into it at night; and it was held that the order was a bad order inasmuch as the only order which could be legally made under sec. 267 was an order which was based on sanitary ground. *Municipal Board of Etawah vrs. Debiprasad*, 42 Allahabad 485. Orders under the present section must be based on grounds of sanitation and the comforts of neighbours. The Commissioners are the sole judges of the necessity for the passing of an order requiring the execution of sanitary improvements and when they are to be exercised.

The section contemplates latrines, urinals, cesspools, etc., the construction of which had been sanctioned by the Commissioners as also those built without them and existing for a long time. Constructions without the written permission of the Commissioners are liable to be demolished under sec. 218 and the persons who make the constructions are liable to punishment under sec. 215 (2). Owner is defined in sec. 3 (18) and occupier in sec. 3 (15). The power under this section is to be enforced against the owner or occupier of any land or building according to the Commissioner's directions.

"As regards other persons the fair inference is that the Legislature intended that the discretion should be exercised in strict conformity with private rights. *Metropolitan Asylum District vrs. Hill*, 6 H.L. App. Cas 218; and there is nothing here to indicate that latrines should be built regardless of other people's rights." *J. Pargiter's B. M. Act*, p. 311. See also 20 Bom. 617 (622) in this connection.

In a Bombay case the plaintiff complained that the defendants had erected a privy within a distance of five cubits from the house belonging to the plaintiff which was a nuisance to whosoever might occupy the same. He sued that an order directing the removal of the privy might be made. The defendants pleaded that by an order of the municipality a pit privy attached to their house had been removed and the present bhangy privy erected and that the site belonged to them, both the lower Courts held that the privy was a nuisance but as the defendants constructed the privy under the orders of the municipality they dismissed the suit; it was held on second appeal that as the municipality had on the proper construction of the Act, Bom. Act VI of 1878 no authority to order the defendants to erect a privy regardless of the plaintiffs rights, they cannot plead that they acted under their orders, the decree was therefore reversed and a direction on the defendants to remove the privy within three months from the date thereof was given. *Sayad Jafir Saheb vrs. Sayad Kadir Rahaman and another*, 12 Bom. 684.

Another Bombay case on a construction of a similar section, *vis.*, sec. 248 of Bom. Act III of 1888, the main question in which was whether a fazendar as owner of the land or a tenant paying ground rent as owner of the house is the person primarily liable to provide privy accommodation, it was held that the fazendar is not the person liable, as owner of the premises, to provide privy accommodation under sec. 248 of the Act. It was admitted at the hearing that sec. 248 was enabling; the object was clearly to give powers to the Municipal Commissioners to get the nuisances abated. Justice Jardine further held that "the suggestion that in the slow course of years the nuisance may disappear as new houses replace the present ones, is not relevant to the questions of law, and we cannot interfere with the Commissioner or tell him how to use his discretion. The families must not be clothed with a privilege to commit a nuisance which it is the object of the impartial law to abate; and the Magistrate may have to put that law in force even if its provisions will have a harsh operation. Still it does not appear that the person liable will be put to any hardship more than usual, as everybody who improves his premises is put to some expenses. As the law does not require each person to erect a privy on his own premises, it does not appear that there is any need to pull down the houses. If the house owners are the persons liable, they can apparently combine to hire land for erecting proper privies." *Municipality of Bombay vrs. Shapurji Dinsha*, 20 Bom. 617 at p. 622.

**Clause (a):**—corresponds to sec. 224 of B. M. Act. Under this clause the Commissioners can require the owner or occupier to close, remove, alter or put in order any latrine, urinal, cesspool, drain or receptacle for sewage or to remove, alter any door or trap-door of any latrine or urinal which opens on to a street or drain and in the requisition the alterations suggested might also be specified. The words in the corresponding section of the B. M. Act were "to repair and make efficient any drain, privy, cesspool or to remove any privy or close any cesspool which is situated on such land."

"Put in good order" has the same meaning as "make efficient."

Under the Bengal Act it was held that the only power given with respect to a drain was to require it to be repaired and made efficient. That the word "efficient" meant only efficient for the purpose of drainage and did not include a case where there was no insufficiency in draining, but the drain itself should be removed on other grounds. The section did not give any power to remove a drain nor is there any other section in the Act which gave such power (the drain in question being not a branch drain or a drain leading to a public sewer). *Gopal Misser vrs. Chairman of Gaya Municipality*, 20 C.L.J. 188.

When a municipality having proceeded in accordance with secs. 245 and 246 of the B. M. Act decides that certain works are necessary, that conclusion in the absence of malafides or fraud or considerations of that nature cannot be questioned in a civil court. The municipality issued notice requiring the plaintiff to remove certain tiled huts and a pucca privy and to construct a new road through the bustee; it was contended that the municipality had no power under sec. 246 to direct the removal of the pucca privy which could only be done under sec. 224. Where the municipality served a notice on the plaintiff although it purported to be a notice under sec. 246 it had a right to require him to remove the privy under sec. 224 and simply because they entitled their notice only under the one section instead of the two the whole proceeding could not be *ultra vires*. *Duke vs. Rameswar Lal*, 26 Cal. 811.

Drain is defined in sec. 8 (6).

"Cesspool" is a pit into which a drain discharges its contents. The word "drain" means, not merely a water channel but a channel used for the flow of offensive matter. Before a channel can be called a drain within the meaning of Municipal Act it must be shown that offensive matter is carried by it and before a pit at the end of such a channel can be called a cesspool it must be shown that offensive matter is discharged into it. *Kasipaty Mukherji vs. Chairman of the Puri Municipality*, 40 I.C. 552.

**Clause (b):**—corresponds to sec. 332 of B. M. Act. This clause will enable the Commissioners to require the owner or occupier to provide in their houses sufficient latrines, urinal, etc., whether in addition or not to the existing ones.

**Clause (c):**—corresponds to sec. 225 of B. M. Act. By this the Commissioners shall be able to have objectionable sites by the road side to be properly enclosed. If the owner or occupier disobeys the requisition the Commissioners can have the thing done by their own agency and recover the expenses from him and may also further prosecute him. See sec. 218.

**Sub-section 2.** When issuing a notice under sub-sec. (1) the commissioners ought to specify in it the description of the thing to be provided, the pattern to which the thing should be altered and the manner in which the thing is to be done; if the notice does not give these descriptions it will be difficult for the person on whom it is served to comply with and it would be absurd to expect compliance with it. But if the notice gives sufficient details from which what is to be done can be made reasonably certain then omission to give all the details mentioned in the section cannot make the notice illegal or invalid.

The requisition is to be served according to sec. 359.

The notice must also state that if the person fails to comply with the requisition or to prefer an objection the Commissioners will enter upon the land and do the required work and that the expenses will be recovered from him. See sec. 359 (2). If any objections are made they are to be disposed of under sec. 362, 363 before action can be taken under sec. 218. Requisitions are to be served according to secs. 357 and 358.

Under the Bengal Act it was held that it was imperative that a notice under sec. 224 B. M. Act should contain or make mention of the second clause or proviso to sec. 175 [corresponding to sec. 359 (2)] and failure to comply with a notice not containing or making mention of the said proviso did not amount to an offence under sec. 271 (corresponding to sec. 218). *Chairman, Puri Municipality vs. Kisorilal Sen*, 1 C.W.N. ccxiv.

For the purpose of a prosecution for non-compliance with a requisition no second notice is necessary. But such a notice is necessary if the municipality contemplate to proceed to do the work under sec. 180 (sec. 364). *Jagadish Chandra Ganguly vs. Srinath Bose*, 2 C.W.N. clxxxvii.

Effect of disobedience  
or contravention of a  
requisition.

**218. (1) If any latrine, urinal, cesspool, drain or receptacle for sewage, offensive matter or rubbish is defective or is constructed contrary to the directions of the Commissioners, or to the provisions of this Act or any by-law made thereunder, or if any person, without the consent of the Commissioners, constructs, rebuilds or opens any latrine, urinal, cesspool, drain or receptacle which has been ordered by them to be demolished or closed, or not to be made, the Commissioners may cause such alterations to be made in such latrine, urinal, cesspool, drain or receptacle as they think fit, or may cause the same to be demolished or removed.**

**(2) The expenses incurred by the Commissioners under sub-section (1) shall be paid by the person by whom such latrine, urinal, cesspool, drain or receptacle was improperly constructed, rebuilt or opened, and such person shall further be liable for each such offence to a fine not exceeding fifty rupees.**

#### NOTES.

Sub-sec. (1) corresponds to sec. 229 and sub-sec. (2) to sec. 272 of B. M. Act.



The section gives the Commissioners power apart from prosecuting the offender under sub-sec. (2) to put the things right. In case of disobedience of a requisition under sec. 217 the Commissioners can get the works done through their own agents and recover the costs from the defaulter and also prosecute him. As to the service of requisition, etc., see notes to sec. 217 *ante*. The notice in addition to the particulars required by the section 217 (2) must also state that if the person fails to comply with the requisition or to prefer an objection the Commissioners will enter upon the land and do the required work and that the expenses will be recovered from him. See sec. 359 (2). If any objections are made they are to be disposed of under secs. 362 and 363 and the decisions communicated to the person orally or by a separate notice and if he still persists in disobeying a 48 hours notice has to be given under sec. 364 and then the Commissioners can enter upon the land and execute the work and then recover the costs. See Chairman, Puri Municipality *vs.* Kisorilal Sen, 1 C.W.N. ccxlv in this connection. See also Rampartap Lal *vs.* Barh Municipality, 1922 Patna 163 (A.I.R.)=3 P.L.T. 301.

For the purpose of a prosecution under sub-sec. (2) for non-compliance with a requisition no second notice is necessary. But such a notice is necessary, if the municipality contemplate to proceed to do the work under sec. 180 (cor. to sec. 364). Jagadish Ch. Ganguly *vs.* Srinath Bose, 2 C.W.N. clxxxvii.

Supply of disinfectants  
by commissioners.

**219. When, under section 217, sub-section (1), an owner or occupier is required by the Commissioners to use disinfectants, the Commissioners shall, if necessary, themselves supply disinfectants or deodorants for such use at cost price, and the expenses thereby incurred shall be considered as an arrear of tax, and be recoverable as such from the owner of the latrine, urinal, cess-pool, drain or receptacle as the case may be, or the Commissioners may, if they think fit, order that such expense shall be paid from the municipal fund.**

#### NOTES.

This section corresponds to sec. 192 of B. M. Act.

The Commissioners can supply disinfectants or deodorants at cost prices and in proper cases free of cost.

Penalty for neglecting to keep latrine, etc., in proper order.

220. If the owner or occupier of any latrine, urinal, cesspool, drain or other receptacle for sewage or offensive matter neglects or refuses, after warning from the Commissioners, to keep the same in a proper state, he shall be liable to a penalty not exceeding fifty rupees:

Provided that any person who is liable to pay a latrine tax shall not be punished with a fine for neglecting or refusing to keep his latrine, urinal, or cesspool in a proper state of cleanliness.

#### NOTES.

The first part of the section corresponds to sec. 217 (3) and the proviso corresponds to sec. 329 of B. M. Act.

“ Where a conservancy tax is levied the Commissioners will be responsible for keeping private latrines, urinals and cesspools in a proper state of cleanliness, but the occupier will have to keep them in a proper state of repair. Sec. 329 of the Bengal Act does not sufficiently emphasise this.”  
 Notes on Clauses, p. 89.

Where no latrine tax is levied the owner or occupier of any land or building is to keep the latrine, urinal, etc., in a proper state of repair and cleanliness, and if after warning from the Commissioners he fails to keep the same in a proper state of repair and cleanliness then only he is liable to the penalty under the first part of the section. If a latrine tax has been levied from the owner or occupier then the Commissioners are responsible for keeping private latrines, urinals, cesspools in a proper state of cleanliness and the occupier is responsible only to keep them in a proper state of repair. The owner or occupier incurs no criminal liability because the municipality undertakes the duty of keeping privies clean and levies a fee therefor.

In a case it was found that a special establishment of sweepers was maintained by the Serampur Municipality for the cleansing of the latrines of a mill, and that they received an extra allowance from the mill for the night-work and were required to report themselves during the night to the mill officers. The latrines used by the operatives became filthy because a pipe became blocked up, the manager was first prosecuted but the prosecution failed, the Chairman was then prosecuted and convicted under the Factories Act and the Municipal Act; on revision it was held that the finding of the lower court being that the manager and the Chairman were jointly responsible, the manager was not discharged from his liability under sec. 15 of the Factories Act and therefore the liability could not be fixed on any

other person and the conviction of the Chairman was set aside. Chairman of Serampur Municipality *vs.* Inspector of Factories, 25 Cal. 454.

**BY-LAWS RELATING TO CONSERVANCY.**

Power to make by-laws regarding conservancy.

**221. The Commissioners at a meeting may make by-laws consistent with this Act—**

- (a) regulating the disposal of sewage, offensive matter, and rubbish, the maintenance of latrines, urinals, cesspools, sinks and drains, the disposal of the carcasses of animals, the fees to be charged for such disposal and the notice to be given of the death of animals;
- (b) providing for the abatement of any nuisance arising within the municipality from sewage, offensive matter or rubbish; and
- (c) generally, to give effect to the objects of this Act, in regard to conservancy and sanitation.

**NOTES.**

The section corresponds to sec. 350 of B. M. Act.

The Commissioners at a meeting can frame by-laws relating to conservancy and sanitation under this section. The by-laws are to be framed in accordance with secs. 354 and 355 and the publication of them is to be made according to sec. 356 and these provisions must be strictly followed to give legal validity to them.

**Consistent with this Act:**—the by-laws are local laws supplementary to the general law and intended to further the administration of the municipality according to its special circumstances. The by-laws must also be consistent with the provisions of this Act and must be framed to give effect to the objects of this Act. See also notes to sec. 195 *ante* in this connection.

By-laws are inconsistent with this Act only if they alter and thereby contradict the Act; and in determining this the object and policy of the Act must be regarded. *Tribhovan vs. Ahmedabad Municipality*, 27 Bom. 221 at p. 256.

“A by-law is a local law, and may be supplementary to the general law; it is not bad because it deals with something that is not dealt with by the general law. But it must not alter the general law by making that lawful which the general law makes unlawful; or that unlawful which the general law makes lawful.” Per Channell J. in *White vs. Morley*, 2 Q.B. 34 at page 39 (quoted in 27 Bom. page 256).

That a by-law is not repugnant to the general law merely because it creates a new offence and says that something shall be unlawful which the law does not say is unlawful. *Gentel vs. Rapps*. (1902) 1 K.B. 160. See 27 Bom. p. 249.

By-laws must also be reasonable and not arbitrary nor against the public benefit. The Commissioners cannot do what they like irrespective of elementary justice. See also notes to sec. 195 in this connection.

Under sec. 391 any by-laws framed under an old Act repealed by this Act are to be considered to have been duly made under this Act and will have the same force and effect until they are repealed by rules framed under this Act.

#### DRAINAGE.

Construction of public drains.

**222.** The Commissioners may construct, within or, subject to the sanction of the Local Government, outside the municipality, such drains as it thinks necessary for keeping the municipality properly cleansed and drained and may carry such drains through, across or under any street or place, and, after reasonable notice in writing to the owner or occupier, into, through or under any buildings or land.

#### NOTES.

The section corresponds to sec. 189 of U. P. Act II of 1916.

" This clause and the next clause (Sec. 223) will make clear the rights of the Commissioners to take their drains through private properties and to alter the course of or close a public drain subject to the provision of equally effective drains for any person affected." Notes on clauses para. 90.

In order to construct a drain outside the Municipality the Commissioners have to take the sanction of the Local Government.

Alteration of public drains.

**223. (1)** The Commissioners may, from time to time, enlarge, lessen, alter the course of, cover in or otherwise improve, a public drain and may discontinue, close up or remove any such drain.

(2) The exercise of the power conferred by sub-section (1) shall be subject to the condition that the Commissioners shall provide another and equally effective drain in place of any existing drain of the use of which any person is deprived by the exercise of the said power.

#### NOTES.

The section corresponds to sec. 190 of U. P. Act II of 1916. See the notes on clauses para 90 quoted under section 222.

Use of public drains  
by private owners.

**224.** The owner or occupier of a building or land within the municipality shall be entitled to cause his drains to empty into the drains of the Commissioners, provided that he first obtains the written permission of the Commissioners, and that he complies with such conditions, consistent with any by-law, as the Commissioners prescribe, as to the mode in which and the superintendence under which the communications are to be made between drains not vested in the Commissioners and drains which are so vested.

#### NOTES.

The section corresponds to sec. 191 of U. P. Act II of 1916.

"Owners and occupiers will be permitted with the consent of the Commissioners to connect their drains with the municipal drains on conditions to be imposed by the Commissioners." Notes on clauses para. 91.

The conditions under which permission can be granted must be consistent with the by-laws of the municipality, as to the mode in which and the superintendence under which the connections are to be made. Unauthorised drains can be demolished under sec. 225.

Power to order demolition of drain constructed without consent of Commissioners.

**225. (1)** If any person, without the written consent of the Commissioners first obtained, makes or causes to be made, or alters, or causes to be altered, any drain or branch drain leading into any of the drains vested in the Commissioners or into any water-course, road or land vested in the Commissioners, the Commissioners may cause such drain or branch drain to be demolished, altered, remade or otherwise dealt with as they shall think fit; and the expenses thereby incurred shall be paid by the person making or altering such drain.

**(2)** Any person who so makes or alters a drain or branch drain without the consent of the Commissioners, shall be liable to a fine not exceeding fifty rupees.

#### NOTES.

Sub-sec. (1) corresponds to sec. 226 of B. M. Act and sub-sec. (2) corresponds to sec. 272 of B. M. Act.

The Commissioners are empowered by this section to demolish, alter, remake or otherwise deal with as they think fit any drain or branch drain leading into any of the drains vested in the Commissioners and recover the costs from the person who is responsible for the unauthorised constructions.

Section 226 of B. M. Act provides that unauthorised drains leading into public sewers may be demolished. The Commissioners have no power to require a drain (*nala*) in a building not being a branch drain or a drain leading to a public sewer to be removed and if such an order is passed it is *ultra vires*. *Gopal Misser vrs. The Chairman of Gaya Municipality*, 20 C.L.J. 188.

Group or block of houses, etc., may be drained by a combined operation.

**226.** If it appears to the Commissioners that a group or block of houses may be drained or improved more economically or advantageously in combination than separately, and a drain or other outlet already exists within one hundred feet of any part of such group or block of houses, the Commissioners may cause such group or block of houses to be so drained and improved,

and the expenses thereby incurred shall be recovered from the owners of such houses, in such proportions as shall to the Commissioners seem fit.

#### NOTES.

The section corresponds to sec. 228 of B. M. Act.

#### CHAPTER VII.

##### The Public Health, Safety And Convenience.

##### *Wells, Tanks and Streams.*

Power to set apart wells, tanks, etc., for drinking, culinary, bathing and washing purposes.

**227. (1)** The Commissioners may, by order published at such places as they think fit, set apart convenient wells, tanks, parts of rivers, streams or channels, not being private property,—

- (a) for the supply of water for drinking and for culinary purposes, or
- (b) for the purpose of bathing, or
- (c) for washing animals or clothes, or
- (d) for any other purpose connected with the health, cleanliness or comfort of the inhabitants,

and may by like order prohibit bathing, or the washing of animals or clothes or other things at any public place not set apart for that purpose, or at a time, or by a sex, other than that specified in the order, and may in like manner prohibit any other act by which water in public places may be rendered foul or unfit for use or which causes or is likely

to cause inconvenience or annoyance to persons lawfully using such places.

(2) Any person who contravenes an order of the Commissioners under sub-section (1) shall be liable to a fine not exceeding fifty rupees.

#### NOTES.

This section corresponds to sec. 199 of B. M. Act and sec. 286 of U. P. Act II of 1916.

"This section corresponds to sec. 199 of the Bengal Act, but is more comprehensive. It provides for setting apart suitable places for bathing with detailed powers as to time and sexes." Notes on Clauses p. 92.

**Sub-section (1):**—this section gives the Commissioners power to regulate the use of wells, tanks, streams, etc., which are not private property, for the purposes mentioned in the sub-section; and they can do so by by-laws framed under sec. 284; it also gives them power to reserve suitable places for bathing, washing animals or clothes, or for any other purpose connected with the health, cleanliness or comfort of the inhabitants.

**Clause (a)** restricts the power of the Commissioners to set apart wells, tanks, etc., for the use of the water therein for drinking and culinary purposes only and not for any other purpose, e.g. for domestic purposes as defined in sec. 8 (81).

Where tanks are set apart under sec. 199 of B. M. Act for the supply of water for drinking and culinary purposes, if special guards are placed over them to prevent offences against the Commissioners' orders the cost of maintaining such guards must be borne by the municipality. Order (Munl.) No. 448-51 T.M. of 18th June, 1892.

A Register is to be kept of the existing sources of water supply in each ward or muhalla in each municipality so as to procure that orders under secs. 199, 199A and 200 are regularly issued and attended to. (Bengal Government Munl.) Circ. No. 7M of 15th May, 1896.

**Sub-section 2.** Contravention of the provisions of sub-sec. (1) is made punishable under this sub-section; the prosecution will have to be made according to sec. 875.

A person who voluntarily corrupts or fouls the water of any public spring or reservoir so as to render it less fit for the purpose for which it is ordinarily used is also punishable under sec. 277 of the Indian Penal Code.

Power to require removal of nuisance arising from tanks, etc.

**223. (1)** The Commissioners may by notice require the owner or occupier of any land or building to cleanse, repair, cover, re-excavate, fill up or

drain off a private well, tank, reservoir, cistern, pool, depression or excavation therein which may appear to the Commissioners to be injurious to health or offensive to the neighbourhood:

Provided that if, for the purpose of effecting any drainage under this section, it is, in the opinion of the Commissioners, necessary to acquire any land or rights in land, not being the property of the person who is required to drain his land, or to pay compensation to any other person, the Commissioners shall provide such land and pay such compensation.

(2) Any person who fails to comply with a requisition issued by the Commissioners under sub-section (1) shall be liable to a fine not exceeding fifty rupees, and to a further fine not exceeding ten rupees for every day during which the default is continued after the expiration of eight days from date of service on him of such requisition.

#### NOTES.

Sub-section (1) corresponds to sec. 269 of U. P. Act II of 1916 and sec. 200 of B. M. Act. Sub-sec. (1) proviso corresponds to sec. 200 and sub-sec. (2) corresponds to sec. 219 of B. M. Act.

"The power to require the owner of a source of drinking water to protect it from pollution will be a valuable one and if exercised will do much to improve thoroughly unsatisfactory wells, etc., which exist in every municipality." Notes on clauses para. 93.

**Sub-section (1).** It empowers the Commissioners to put unwholesome sources of water supply in good condition. They must first pronounce whether such sources appear to them to be injurious and if they are so, of which they are the sole judges, they may issue requisitions on the owner or occupier of any land or building to cleanse, repair, cover, excavate, fill up or drain off a private well, tank, reservoir, etc., in question.

Under the Bengal Act sec. 200 wells, water courses, private tanks or pools could be re-excavated or filled up or cleansed. The Commissioners were empowered to order one or other of these three courses to be adopted. Yet the owner or occupier had some option which course he would take and the option applied only to re-excavating or filling up. The Commissioners could order the owner or occupier either (1) to re-excavate or fill up or (2) to cleanse, and in the former case he had the option whether he would re-excavate or fill up but further than this he had no option and was bound to carry out whichever course he was ordered. Under the present section no



option has been given to the owner or occupier and he must comply with the requisition within the prescribed time or file objections and act according to the decision on them.

By sec. 317 of the City of Madras Municipal Act 1878 the President of the Municipal Commissioners was invested with a discretion as to the necessity of cleansing or filling up tanks and wells and draining off stagnant water likely to prove injurious to the health of the neighbourhood and by sec. 319 of the Act he was empowered on neglect of the owner to comply with a requisition to do the necessary work, to get the work done and to recover costs in the manner provided for the collection of taxes. No appeal was allowed by the Act against the president's decision; in a suit by the Municipal Commissioners to recover from the defendants the cost of draining and cleansing a tank it was held that it was not open to the defendants to prove that the tank was not likely to prove injurious to the health of the neighbourhood and that the President was the sole judge of the necessity of taking such actions and that the municipality was entitled to recover costs of the execution of the work. *The Commissioners of the City of Madras vrs. Parthasaradi and another*, 11 Madras 341.

Where a municipality cleared out and re-excavated a tank after default on the part of a owner to comply with a notice to carry out such works held, that the municipality had a discretion as to how the work should be carried out and that even though the rates charged by the municipality were higher than those which could be obtained by other persons these were not grounds for the interference by the High Court. *In re Jogesh Chandra Dutt*, 16 W.R.C.R. 285.

The requisitions will be issued under sec. 259 and secs. 360 to 364 will apply to them; any objections to the requisitions will have to be disposed of and the result communicated before the Commissioners can execute the work themselves.

**Proviso**—Any land can be acquired by the Commissioners under sec. 63. The Commissioners have to pay the costs of acquisition. Any rights in any land can also be acquired if that will suffice for the purpose for which it is intended.

**Sub-section (2)**—Failure to comply with a requisition under sub-section (1) is made punishable and the owner or occupier is liable to prosecution under this sub-section. A daily fine can be inflicted for the number of days during which the disobedience continued but only after the expiry of 8 days from the date of service of the requisition and not immediately.

For the procedure for inflicting a daily fine see notes to sec. 103.

There must be a separate prosecution for the continued offence, a charge must be laid of a specific contravention for a specific number of days and it

is then only that the Magistrate can inflict a fine at a certain sum per day for the days for which the commission of the offence has been proved. This must be done after conviction for the offence of refusal to obey the requisition. See *Nanilal Seth vrs. Corporation of Calcutta*, 7 C.W.N. 858 and the other cases cited in the notes to sec. 108 *ante*.

Power to require cleansing of sources of water for drinking or culinary purposes.

**229. The Commissioners may by notice require the owner of, or the person having control over, a private water-course, spring, tank, well or other place, the water of which is used or likely to be used for drinking or culinary purposes, to clean the same from time to time of silt, refuse or decaying vegetation, and may also require him to protect the same from pollution in such manner as to the Commissioners may seem fit, and in the case of a well to repair the same.**

#### NOTES.

The section corresponds to sec. 225 (1) of U. P. Act II of 1916.

"The power to require the owner of a source of drinking water to protect it from pollution will be a valid one and if exercised will do much to improve the thoroughly unsatisfactory wells, etc., which exist in every municipality." Notes on clauses para 98.

The section enables the Commissioners to order the owner or any person having control over a private water-course, spring, tank, well the water of which is used or is likely to be used for drinking, or culinary purposes to cleanse the same or to keep it free from pollution and in a good condition and in the case of a well have it repaired also.

The requisitions will be issued under sec. 359 and on failure to comply with them the Commissioners can have the work done by their own agents and recover costs.

Power to prohibit use of polluted water for drinking or culinary purposes.

**230. (1) If the Director of Public Health, Civil Surgeon, Assistant Director of Public Health or Health Officer certifies that the water of any water-course, spring, tank, well, or other place, used or likely to be used for drinking or culinary purposes, is, if so used, liable to engender or cause the spread of disease and that, owing to its situation or other cause, such place cannot effectively be protected from pollution, or if the owner of, or person having control over, any such place refuses or neglects to comply with a requisition of the Commissioners under section 229, the Commissioners may—**

(i) by public notice prohibit the use or removal of water from such place for drinking or culinary purposes during a period to be specified in the notice and take such steps as they may consider necessary to prevent the removal of water for such purposes, or,

(ii) in the case of a private well, require the owner of, or person having control over it, to close it permanently or to fill it up with suitable material.

(2) Any person who fails to comply with an order under this section shall be liable to a fine not exceeding fifty rupees.

#### NOTES.

Sub-sec. (1) corresponds to sec. 349 G. of B. M. Act.

Sub-sec. (1) (i) corresponds to sec. 199A of B. M. Act.

Sub-sec. (1) (ii) corresponds to sec. 225 (2) of U. P. Act II of 1916.

Sub-sec. (2) corresponds to sec. 217 (4) of B. M. Act.

“ Power to order the filling up of a well is given in two cases :—

(1) When a Medical or Sanitary officer certifies that the use of the water for drinking or culinary purposes is likely to cause disease and that it is impossible to protect it from pollution; and

(2) when the owner has been called on takes steps to prevent it from pollution and has failed to do so.” Notes on clauses para. 94.

The certificates of the Director, Assistant Director of Public Health, the Civil Surgeon or Health Officer that the water of any water-course, spring, tank, well or other place is dangerous to health and likely to spread infection and unsafe for drinking and culinary purposes and that such place cannot be effectively protected from pollution is conclusive proof on that point and the Commissioners can take action on it under this section and issue the prohibition and maintain it till the water is ascertained to be wholesome. The use of the word “ any ” before “ water-course, spring, tank, etc.,” suggests that action under this section can be taken whether the water-course, spring, tank, well or other place is public or private provided that there is the certificate of the medical officer.

**Clause (ii).** This clause mentions only the power to fill up a private well, public wells being municipal properties can be dealt with by the Commissioners in any way they think proper and at their cost.

**Sub-sec. (2).** The failure to comply with a requisition under sub-sec. (1) within the period appointed is a complete offence and is punishable under this clause. For prosecution see sec. 375.

Power to inspect  
and disinfect sources of  
water used for drinking.

**231. The Commissioners or any person authorized by them in that behalf may, at all reasonable times, inspect and disinfect any water-course, spring, tank, well or other place from which water is, or is likely to be, taken for drinking or culinary purposes, provided that reasonable notice shall be given before the inspection of a well situated within a house is made.**

#### NOTES.

The section corresponds to sec. 226 of U. P. Act II of 1916.

"The power to disinfect sources of water-supply will be useful." Notes on Clauses, p. 95.

Any water-course, spring, tank, well, etc., whether public or private may be inspected and disinfected under this section.

Removal of latrines,  
etc., near any source  
of water-supply.

**232. The Commissioners may, unless a written permission has been given under section 215, by notice require an owner or occupier on whose land a drain, latrine, urinal, cess-pool or other receptacle for sewage, offensive matter or rubbish exists within fifty feet of a spring, well, tank, reservoir or other source from which water is, or may be, derived for public use, to remove or close the same, or to put it in such condition as to prevent any pollution of the water-supply, within one week from the service of such notice.**

#### NOTES.

The section corresponds to sec. 227 of U. P. Act II of 1916.

The section empowers the Commissioners to order the removal of latrines, etc., near any source of water-supply in order to prevent the pollution or contamination of the water. ...

It may not be always necessary to remove or close the latrine, urinal cess-pool, etc., it may suffice if they are put in such order as to prevent any possibility of their polluting the sources of water-supply situated near them and the Commissioners in such cases may order the latrine, etc., to be properly constructed or put in good order. The section gives the Commissioners full discretion as to what should be ordered to be repaired or closed or put in good order. The requisition is to be served according to sec. 359 and in case of non-compliance the work may be done by the Commissioners and the costs recovered from the owner or occupier.

Wells, tanks, etc. to be secured. **283. (1)** If any well, tank or other excavation, whether on public or private ground, is, for want of sufficient repairs or protection, dangerous to passengers, the Commissioners shall forthwith, if it appears to them to be necessary, cause a temporary hoard or fence to be put up for the protection of passengers, and may require the owners or occupiers, or the owners or occupiers, of the land on which such tank, well or other excavation is situated, within seven days properly to secure or protect such well, tank or other excavation.

**(2)** Any person who fails to comply with a requisition issued by the Commissioners under sub-section (1), shall be liable to a fine not exceeding fifty rupees, and to a further fine not exceeding ten rupees for every day during which default is continued after the expiration of eight days from the date of service on him of such requisition.

#### NOTES.

Sub-sec. (1) corresponds to sec. 209 and sub-sec. (2) corresponds to sec. 219 of B. M. Act.

If the Commissioners are of opinion that any well, tank or other excavation situated either on public or private ground is dangerous to passengers on account of their being not in a proper state or unprotected they may, if the case is urgent, forthwith put a hoard or fence around it for the protection of passengers and in other cases require the owners or occupiers to secure or protect such well, tank or excavation within 7 days of the receipt of the notice.

The municipality by means of a requisition under sec. 209 of B. M. Act can compel a person to erect a fence by the side of a tank. The person so bound can transfer to the municipality the duty by conditions entered into by the latter with the former. *Superintendent and Remembrancer of Legal Affairs, Bengal vs. Narayan Chandra Banerji*, 38 C.L.J. 13=73, I.C. 776

For the procedure as to how requisitions are to be enforced see sec. 359.

**Sub-sec. (2).** The failure to comply with the requisitions under sub-sec. (1) is a complete offence and its continued default is a separate offence and both are punishable under this sub-section. For the procedure to inflict a daily fine see notes to sec. 106 *ante*.

If the owner or occupier fails to comply with the requisition he can be prosecuted under this section and the Commissioners can also have the work done under sec. 364.

Power to make by-laws.

**234. The Commissioners at a meeting may make by-laws consistent with this Act regulating the use of, and the prevention of nuisances in regard to, the public water-supply, bathing and washing-places, streams, channels, tanks and wells.**

#### NOTES.

The section corresponds to sec. 350 (b) of B. M. Act.

The procedure to frame by-laws is laid down in sec. 354 and a strict compliance with it is necessary in order to give legal validity to the by-laws.

**Consistent with this Act.** The by-laws are local laws supplementary to the general laws and intended to further the administration of the municipality according to each special circumstances. The power to frame by-laws includes the powers exercisable in a like manner and subject to the like sanction and conditions to add to, amend, vary or rescind any by-laws so made. Sec. 24 of B. & O. General Clauses Act (Act 1 of 1917).

By-laws are inconsistent with the Act only if they alter and thereby contradict the Act and in determining this the object and the policy of the Act must be regarded. *Tribhoban vrs. Ahmedabad Municipality*, 27 Bombay 221 at p. 256. See also notes to sec. 354 in this connection.

By-laws framed under any Act previously in force and repealed by this Act will be in force and effect until they are replaced by new by-laws framed under this Act. See sec. 391.

#### INSANITARY PROPERTY.

Cleansing of filthy buildings or land.

**235. If any building or land is in a filthy or unwholesome state, the Commissioners may by notice require the owner or occupier thereof to cleanse, or otherwise put in a proper state, the building or land and thereafter to keep the same in a clean and proper state.**

#### NOTES.

This section corresponds to sec. 195 of B. M. Act and sec. 271 of U.P. Act II of 1916.

" Sec. 195 of the Bengal Act provides for three cases, (1) thick or noxious vegetation affording facilities for nuisance; (2) inequalities of surface affording facilities for nuisance; and (3) land by want of drainage in a state-injurious to health and offensive to the neighbourhood. It gives no power to remove noxious vegetation on the ground that it is a danger to health, and no power to clean up filthy buildings or to clean land which is in a filthy condition except by drainage. Secs. 285, 288 (2), 239 of the present Act reproduce the substance of the section (sec. 195 of B. M. Act) and remedy the above defects." Notes on clauses para. 97.

If in the opinion of the Commissioners any building or land is in a filthy or unwholesome state they may require the owner or occupier of it to have it cleansed immediately and to keep it clean thereafter. The Commissioners are made the sole judges of the fact whether any building or land is in a filthy or unwholesome state and whether any action should be taken under this section.

For procedure as to service of notice, etc., see sec. 359 and the subsequent sections.

Buildings unfit for human habitation.

**236. (1)** The Commissioners may prohibit the owner of any house, not being a hut, from letting it for occupation, if in their opinion it is unstable or if the drainage or latrine accommodation is defective, until its stability shall have been secured or the defects in drainage and latrine accommodation made good.

**(2)** Any person who lets a building or any part thereof contrary to an order under sub-section (1), shall be liable to a fine not exceeding fifty rupees, and to a further fine not exceeding ten rupees for every day during which the offence is continued after he has been convicted of such offence.

#### NOTES.

Sub-sec. (1) corresponds to sec. 242 of B. M. Act and sec. 278 of U. P. Act II of 1916, Sub-sec. (2) corresponds to sec. 273 (1) of B. M. Act.

“The provisions of this clause give more useful powers than the corresponding sec. 242 of the Bengal Act.” Notes on clauses para. 98. The Commissioners are constituted judges in the matters referred to in this section and their decision is subject only to appeal, and cannot be questioned otherwise and the decision of the appellate authority is final. See sec. 373.

‘Hut’ is defined in sec. 8 (11). See notes to the section and also notes to sec. (1). The prohibition would be by requisition under sec. 359.

**Sub-sec. 2:**—prescribes the punishment for non-compliance with a requisition under sec. (1).

For the procedure for inflicting daily fine see notes to sec. 103 *ante*.

Power to prevent rainous or unoccupied buildings from becoming a nuisance.

**237.** Whenever it appears to the Commissioners that any building, by reason of being unsecured and untenanted, or by reason of having fallen into ruins, affords facilities for the commission of a nuisance or for the harbouring of snakes or other noxious animals, the Commis-

sec. 242. 242—242

slender may require the owner of such building, or the owner of the land to which such building is attached, properly to secure the same or to remove or level such ruins, as the case may require.

#### NOTES.

The sec. corresponds to sec. 210A of B. M. Act.

The Commissioners are constituted the sole judges to decide whether any building in ruins affords facilities for the commission of nuisances or for the harbouring of snakes or other noxious animals. Action may be taken under the section if the ruins afford facilities for the commission of nuisances, etc. Negligence in pulling down or repairing a house in ruins might be an offence under sec. 288 of I. P. C.

The penalty for non-compliance with a requisition under the section is prescribed by sec. 242. For the procedure for the issue of the requisition and the procedure after it see sec. 359 and the subsequent sections.

**238. (1)** If any land being within one hundred feet of a drain or other outlet into which such land may, in the opinion of the Commissioners, be drained is not drained to their satisfaction, the Commissioners may require the owner within one month to drain the said land into such drain or outlet.

**(2)** If it appears to the Commissioners that any land is by want of drainage in a state injurious to health or offensive to the neighbourhood, the Commissioners may require the owner or occupier, or both, within fifteen days to drain such land.

**(3)** If for the purpose of effecting any drainage under this section, it is, in the opinion of the Commissioners, necessary to acquire any land, not being the property of the person who is required to drain his land, or to pay compensation to any other person, the Commissioners shall provide such land and pay such compensation.

#### NOTES.

Sub-sec. (1) corresponds to sec. 227 of B. M. Act, sub-sec. (2) corresponds to sec. 195 and sub-sec. (3) corresponds to the proviso to sec. 195 of B. M. Act.

**Sub-section (1).** The Commissioners are constituted the sole judges to decide the matters referred to in the section.

Objections can be preferred by the owner and they are to be disposed of under secs. 359 to 368.



On a construction of a similar section, *vis.*, sec. 817 of the City of Madras Municipal Act 1878 by which the President was invested with a discretion as to the necessity of cleansing and filling up tanks, wells and draining off stagnant water likely to prove injurious to the health of the neighbourhood; no appeal was allowed by the Act against the President's decision. In a suit by the municipality to recover the cost of draining and cleansing a tank, at the request of the defendant's vakil the following question was referred to the High Court:—"Is it open to the Court to decide whether the tank, the subject of the suit, was at the time when the municipality took action in the matter injurious to health or offensive to the neighbourhood within the meaning of sec. 817 of the City of Madras Municipal Act 1878?" it was held that the section invested the President with the discretion to require the owner of the tank to drain off or remove the stagnant water from the tank, and in the event of the owner neglecting to comply with such requisition the President may execute the work and recover the expenses in the manner prescribed by sec. 818. No appeal was given and the President was constituted the sole judge of the necessity of the measure; it was not open to the Courts to decide the question whether the tank in question was in fact at the time when the municipality took action in the matter injurious to health or offensive to the neighbourhood within the meaning of sec. 817 of the Act. *The Municipal Commissioners for the City of Madras vrs. Parthasaradi and another*, 11 Mad. 841.

Disobedience of the requisition under this sub-sec. is punishable under sec. 242.

**Sub-sec. (2). Appears to the Commissioners:**—the condition precedent to the issue of a valid requisition is that it shall appear to the Commissioners that the premises are in a condition specified in the notice.

In a Bombay case the accused was served with a notice under sec. 377 of Bombay Act III of 1888 requiring him to remove filth, rubbish, heaps of *cutchera* and stable refuse from a large piece of vacant land belonging to him. He failed to comply with the requisition and was prosecuted. The Magistrate viewed the premises and having so viewed them but without hearing any evidence acquitted the accused as the premises did not appear to him to be in a filthy condition. On appeal against the acquittal it was held that the premises having appeared to the Commissioners in a filthy condition notice was validly issued under sec. 377 of the City of Bombay Municipal Act 1888 and that there having been a non-compliance with the notice the offence was complete, held further, that section 377 of the Act enacts that the only condition precedent to the valid issue of the requisition is that it shall appear—not to the Magistrate but—to the Commissioners

that the premises are in a condition specified in the section and that the Magistrate was wrong in acquitting the accused. *Emperor vs. Raja Bahadur Shirlal Motilal*, 84 Bombay 346.

In another case under section 381 of the Bombay Municipal Act which gave the Commissioners power to require the owner of low ground to cleanse it and fill it up the Municipal Commissioners issued a notice to the appellant as owner of certain low-lying land. The notice stated that in the opinion of the Commissioners the ground accumulated water in the monsoon and caused nuisance to the tenants of two chawls situated on the premises. The owner was required to "fill in the low-lying ground with sweet earth to the level of the road and slope it towards the new drain on the road side." As the owner refused to comply he was convicted for non-compliance with the notice. In revision it was held reversing the conviction that "the notice was illegal; the words in sec. 381 were 'low ground' which was not the same thing as low-lying ground and though the section gave power to the Commissioners to require the owner of low ground to cleanse and fill up the same it did not permit them to issue an order that an indefinite extent of low-lying ground shall be filled up to some particular level or filled up with sweet earth or that it should be sloped in a particular direction." In *Re Municipal Commissioners for the city of Bombay vs. Hari Dwarkoji*, 24 Bombay 125.

**Drain such land.** The Commissioners cannot require a man to make an open drain in a particular place of his premises. See *Emperor vs. Nadir Shah H. E. Sukhia*, 29 Bombay 35.

The punishment for non-compliance with requisitions under sub-secs. (1) and (2) is prescribed by sec. 242. For the procedure as to service of requisition and disposal of objections, see secs. 359 to 363. If the owner or occupier does not comply with the requisition the Commissioners have two courses open to them, (1) to enforce requisition according to sec. 364 and (2) to punish the man under sec. 242. See *Re Gopikishen Gossain*, 24 W. R. Cr. 79.

**Sub-sec. 3.** The acquisition has to be done according to sec. 63 and the payment of compensation made according to sec. 379.

"The authority here conferred extends not only against the owners and occupiers but also against other persons whose rights may be interfered with. *Holt vs. Corporation of Rochdale* (1870) L. R. 10 Eq. 354." Justice Pargiter's B. M. Act, 201.

Power to require owner to clear away noxious vegetation.

**239.** Wherever on any land, being private property, there exists thick vegetation or undergrowth which appears to be injurious to health or to form an im-

**pediment to efficient ventilation, the Commissioners may by notice require the owner or occupier of such land, within a period to be specified in such notice, to clear away and remove such vegetation or undergrowth.**

#### NOTES.

The section corresponds to sec. 195 of B. M. Act.

**Appears to be injurious to health:**—The Commissioners have to do the work with the assistance of their officers and servants. See sec. 87. They may act on the report of their officers or their own knowledge that there exists thick vegetation or undergrowth injurious to health or which form an impediment to efficient ventilation.

In a case under sec. 78 of the Bengal Act III of 1864 (which was exactly similar to the present section) the Municipal Commissioners of Krishnaghur, on the opinion of their medical officer that sickness was prevalent in the town and suburbs in consequence of the jungle which was growing there issued a proclamation that all jungles should be cleared and about 7,600 notices were issued ordering all persons to burn down the jungle or bury it under 2 feet of earth. The Commissioners did not before issue of the notices satisfy themselves that any particular jungle to be cut was a thick or noxious vegetation injurious to health or offensive to the neighbourhood; which was done by the tax-daroga and the tax-sarker, and after their visits notices were issued and served individually. One Woomesh Chandra Roy disregarded the notice and the Commissioners after service of another notice that the Commissioners will enter upon the property after 48 hours' notice (provision similar to sec. 864 of this Act) with servants and coolies and carry into effect everything which was required to be done under the first notice, executed the works and then sued the person for the costs incurred, the trial Court was of opinion that the notices were illegal as the Commissioners before issuing the notice were bound in each case to satisfy themselves that the particular premises served under the notice were by reason of thick or noxious vegetation in a state injurious to the salubrity of the town. The High Court held that the Commissioners were to be assisted by their officers and servants in causing all noxious vegetation which was growing in the town to be cleared; they were not bound like judicial officers to summon each individual and to sit and hear evidence on both sides in the presence of the parties concerned; nor were they bound to go to each particular plot of land personally and individually to ascertain by evidence, or upon their own views whether the jungle growing there was injurious to the health of the inhabitants or not. They had to ascertain in the best way they could with the assistance of their

officers, whether there was any jungle growing in the town which was noxious or injurious and if they were obliged to clear away the jungle on the defendant's land in consequence of his non-compliance with the notice served upon him, he is liable to pay the costs incurred in doing so. Lord H. Ulick Browne *vs.* Umesh Chandra Roy, 7, W.R. 218.

The word "jungle" is defined by Wilson to be "a tract suffered to be overspread with vegetation."

In a Bombay case on a construction of a similar section viz., sec. 878 of the Bombay Act it was held that the only condition precedent to the valid issue of a requisition was that it should appear—not to the Magistrate but to the Commissioners—that the premises were in a condition specified in the notice. Emperor *vs.* Raja Bahadur Shirlal Motilal, 84 Bombay 846.

Requisition is to be served according to sec. 359 and punishment for non-compliance is prescribed by sec. 242.

**240. (1) The Commissioners at a meeting may by a general order prohibit the making of excavations for the purpose of digging earth or stones therefrom, or for the purpose of storing rubbish or offensive matter therein or the digging or construction of tanks, pits and cesspools, without their special permission previously obtained.**

**(2) Any person who contravenes an order under this section shall be liable to a fine not exceeding twenty-five rupees.**

#### NOTES.

Sub-section (1) corresponds to sec. 232 and sub-sec. (2) corresponds to sec. 270 (4) of B. M. Act.

"Rubbish" and "offensive matter" defined in secs. 3 (25) and (16).

The Commissioners at a meeting will pass an order prohibiting excavations or storing rubbish or offensive matter or digging of tanks, pits and cesspools and must publish it according to sec. 356; this is imperative. The Chairman when a case occurs can issue the requisition and on failure to comply can prosecute under sub-sec. (2).

The Commissioners can regulate the digging of tanks within the municipal limits under sub-sec. (1).

By a by-law of the Howrah Municipality framed under sec. 84 of Act III of 1864 (B. C.) and confirmed by the Local Government, the municipality was empowered to grant or refuse permission to dig a tank; in a suit

by the plaintiff to establish his right to excavate a tank on his own land on refusal of permission it was held that it was within the discretion of the municipality to refuse permission for the excavation of a tank and the courts had no power to interfere with the bona-fide exercise of such discretion. *Bhyrab Chandra Bannerji vs. Mr. G. E. Makgill, Chairman of Howrah Municipality*, 17, W.R. 215.

Power to prohibit cultivation, use of manure or irrigation injurious to health.

**241. If the Commissioners at a meeting are of opinion that the cultivation of any description of crop, or the use of any kind of manure, or the irrigation of land in any specified manner,—**

- (a) in any place within the limits of the municipality is injurious, or facilitates practices which are injurious to the health of persons dwelling in the neighbourhood, or
- (b) in any place within or without the limits of the municipality, is likely to contaminate the water-supply of the municipality or otherwise render it unfit for drinking purposes,

the Local Government may, on receipt of an application from the Commissioners, by public notice, prohibit the cultivation of such crop, the use of such manure, or the use of such method of irrigation or impose such conditions with respect thereto as may prevent injury therefrom:

Provided that, if the act prohibited has been practised in the ordinary course of husbandry at any time during the five successive years last preceding the date of the prohibition, compensation shall be paid from the municipal fund to all persons interested therein for any damage caused to them by such prohibition.

#### NOTES.

The section corresponds to sec. 120 of Punjab Act III of 1911 and sec. 98 of C. P. Act XVI of 1908.

"The municipal enactments of Madras, the Punjab and Central Provinces contain provision for the prohibition of wet cultivation within the municipal limits. It is generally agreed that a similar provision would be useful in Bihar and Orissa." Notes on clauses para 99.

The section as it stood in the original bill ran thus:—

"If the Director of public health, Assistant Director of public health, the Civil Surgeon or the Health Officer certifies that the cultivation of any description of crop, etc., (same)."

The Select Committee recommended the change as now appears in the section with these remarks:—

"We do not consider that it is necessary to provide by law for the certificate of a medical officer but leave the decision to the Commissioners at a meeting." Report of the Select Committee, para 70.

If the Commissioners are of opinion that (1) the cultivation of any description of crop, (2) or the use of any kind of manure, (3) or the irrigation of land in a specified manner within the municipal limits is injurious to health or provides facilities for practices injurious to the health of the neighbours or is likely to contaminate the water supply of the municipality, they may at a meeting resolve and move the Local Government by an application to prohibit the three things within the municipal limits; and the Local Government may by public notice prohibit the three things mentioned above or impose conditions which will prevent any injury arising from them. After the Local Government issues the prohibitory notices, the Chairman will by requisition under section 359 direct the people to remove the nuisance and failure to obey the requisition will be punishable under sec. 242.

If the act prohibited had been ordinarily practised for five consecutive years, the persons affected by the prohibition shall have to be paid compensation for damage out of the municipal fund.

**Wet.**—According to Webster's dictionary means "employing or done by means of or in the presence of water or other liquid."

The crops which are meant are "singara" cultivation in Bihar and similar cultivation in other places.

**242. Any owner or occupier of a house or land who fails to comply with a requisition issued by the Commissioners under the provision of section 235, 237, 238, 239 or 241 shall be liable, for every such default, to a fine not exceeding fifty rupees, and to a further fine not exceeding ten rupees for every day during which the default is continued after the expiration of eight days from the date of service on him of such requisition.**

Penalty for disobeying requisition

## NOTES.

The section corresponds to secs. 249 and 271' of B. M. Act.

Requisitions under sec. 238 (1) fix a period of one month within which the work is to be done and those under sec. 238 (2) a period of 15 days. The section which do not fix any period for the requisitions are secs. 235, 237, 239 and 241; for requisitions under these sections 8 days seem to be the period.

The Commissioners may give notice pointing out the defects and requiring them to be remedied; and if default is made the delinquent is punishable under this section. The daily fine can be inflicted if the man persists in disobeying the requisition even after the expiry of 8 days from the date of service of the requisition.

For the procedure for inflicting daily fine see notes to sec. 108. As regards the prosecution see sec. 875.

#### SANITARY MEASURES WITH REGARD TO BLOCKS OF HUTS.

**243.** Whenever the Commissioners at a meeting are satisfied, from inspection, or by report of competent persons, that any existing block of huts within the municipality is, by reason of the manner in which the huts are constructed or crowded together, or of the want of drainage and the impracticability of scavengering, attended with risk of disease to the inhabitants of the neighbourhood, they may cause the locality to be inspected by two medical officers, who shall make a report in writing on the sanitary condition of the said block of huts, and shall specify, if necessary, in the said report, the huts which should be removed, the roads, drains and sewers which should be constructed, and the low lands which should be filled up with a view to the removal of the said risk of disease.

#### NOTES.

The section corresponds to sec. 245 of B. M. Act.

"The term 'hut' has been defined in clause 3 (11) for the purposes of this and the following clauses." Notes on clauses para 100.

The definition of building under the present Act sec. 8 (1) includes a hut and by sec. 8 (11) hut includes all latrines, urinals, out-houses and other subsidiary buildings on the same holding as the hut. Action under sec. 243 to 247 can be taken not only as regards block of huts, in an insanitary bustee but also as regards the latrines, urinals, etc., situated in it.

The section deals with insanitary bustees, where there is a risk of disease by reason of the manner in which the huts are constructed or crowded together or of the want of drainage and the impracticability of scavengering. If the Commissioners at a meeting are satisfied either from inspection or report of competent person that there is such a risk of disease on account of the existence of one or other of the conditions above mentioned they can have a thorough medical inspection and report; but it is for them to say on materials before them whether there is such a risk.

The report will confirm or disprove their opinion and if it is confirmatory it will advise them what to do, the report shall specify the sanitary conditions of the locality and the measures to be taken to improve their conditions and on receipt of the report the Commissioners will consider them at a meeting and decide what action may be taken. See sec. 244.

See in this connection the case of *F. W. Duke vrs. Rameswar Malia* 26 Cal. 811 where it was held that the question of necessity or otherwise of a proposed measure is left by the Legislature to the decision of the municipality and though no doubt a civil court can restrain a corporation from doing anything *ultra vires* the question of necessity is not to be so decided. So long as they have the materials before them it is for them and them alone to say whether, upon those materials they are satisfied that there is a risk of the kind this section contemplates.

The report must be of two qualified medical officers. The municipal Commissioners cannot for action under this section depend on the report of tax darogas or tax collectors. See in this connection *Lord H. Ulick Browne vrs. Umesh Chandra Ray* 7 W. R. 218 where it was held that the Commissioners had to ascertain in the best way they could with the assistance of their officers, whether there was any jungle growing in the town which was noxious or injurious to the health and if so to have it removed.

A municipality is competent to deal with a collection or block of huts under sec. 245 of the B. M. Act even though within the area which is locally called a bustee there may be pucca buildings. *Narayan Munjari Dassi vrs. Chairman of Howrah Municipality* 20 C. W. N 445=86 I. C. 618=1925 Calcutta 676 (A.I.R). See also sec. 247.

In an unreported case *Gobindalal Seal and others vrs. the Howrah Municipality* decided on the 15th of January 1884. Mr. Justice O'Kinealy made the following remarks with regard to the interpretation to be placed on the section (sec. 245 of the B. M. Act):—

'The question in this case appears to me to be simply a question of construction,—that is to say, the construction to be put upon the report submitted by two medical officers to the corporation authorities under sec. 246 of the Municipal Act. When the Commissioners at a meeting are satisfied of a certain state of facts, they may cause the locality to be inspected by two medical officers, who shall make a report in writing on the huts, the drains, roads and sewers, which are to be constructed with a view to the removal of the risk of disease. By the words 'risk of disease' is meant the risk of disease referred to in the previous part of the



section. In order that the corporation could proceed to exercise the very summary power given to them by the Act, it seems to me that it was absolutely necessary that the medical certificate should cover what purported to have been done under the Act."

"Now, on turning to the medical certificate we find nothing of the kind. It runs as follows:—'We, the undersigned Medical Officers have the honour to report that, at the request of the Municipal Commissioners we have carefully inspected the block of huts situated within the localities specified below, and we are of opinion that the huts are so crowded together and so irregularly situated that there is risk of disease to the inhabitants, and there are no means for effectually scavenging the locality and there is a want of drainage. We have specified below, in detail, what improvements we consider to be necessary in the way of making roads and drains and removing huts'. The crowding of huts is a matter which gives jurisdiction to the Commissioners under sec. 264. Irregular building does not. So looking to the certificate, we must read it to be that, so far as the huts are crowded together, there is a risk of disease. Further than this we cannot go, for it certainly does not state that insufficiency of scavenging or the want of drainage is attended with any risk whatever. The order cannot go beyond the certificate. I think therefore, that so much of the order as refers to the crowding of huts and the removal of them is good, while the latter portion which refers to the insufficiency of scavenging and want of drainage, is bad.'" Colliers Bengal Municipal Act, 7th edition, page 190.

Power to serve **244.** On receipt of the said report, the Commissioners at a meeting may require the owners or the occupiers of the huts, or, at the option of the Commissioners, the owner of the land on which such huts are built, to carry out and execute within a reasonable time to be fixed by the Commissioners for such purpose, all or any of the works specified in the aforesaid report or any portion thereof respectively, and, if such owner, owners, or occupiers shall fail to comply with such requisition, the Commissioners themselves may execute all or any of such works.

#### NOTES.

The section corresponds to sec. 246 of B. M. Act.

After receiving the medical report the Commissioners at a meeting are to consider it. It is for them to say, whether if any and if so what works are necessary and they are the sole judges of what sanitary improve-

ments are required. They can issue their requisitions accordingly, and can lay it at their option either on the owners or occupiers of the huts or on the owner of the land. So long as their action is in conformity with the provisions of the sections 245 and 246 of B. M. Act (secs. 243 and 244 of this Act) and not outside the terms of the report it cannot be challenged in the Civil Court except on the ground of *mala fides* or fraud. *F. W. Duke vrs. Rameshwar Malia*, 26 Cal. 811=3 C. W. N. 508.

**Owner of the land:**—Includes all owners of the lands on which the huts stand. For definition see sec. 3 (18).

The section leaves it to the discretion of the Commissioners to fix the period within which the proposed works are to be done. The requisitions will be issued under sec. 359 and they can be enforced according to sec. 364 and costs recovered under sec. 368 subject to any orders passed under sec. 245.

Recovery of expenses by instalments or remission in cases of poverty.

**245. The Commissioners at a meeting may order that any expenses payable in respect of any work done by them in consequence of the failure of the owners or occupiers to execute such work when required to do so under the last preceding section shall be recovered by instalments from the person liable to pay the same; or, if it appears to them that the said person is unable by reason of poverty to pay the same, may order the same, or any portion thereof, to be paid out of the municipal fund.**

#### NOTES.

The section corresponds to sec. 247 of B. M. Act.

The expenses of all works done by the municipality are recovered according to sec. 368, but the Commissioners at a meeting may, under this section, order that the costs in a particular case are to be realised by instalments or, in case of poverty the entire costs or a portion of it may be paid out of the municipal fund.

Sale of huts.

**246. If any of the said huts is pulled down, the Commissioners shall cause the materials of each hut to be sold separately, if such sale can be effected, and the proceeds shall be paid to the owner of the hut, or if the owner be unknown, or the title disputed, shall be held in deposit by the Commissioners until the person interested therein obtains the order of a civil court of competent jurisdiction for the payment of the same.**

## NOTES.

The section corresponds to sec. 248 of B. M. Act.

If the ownership is disputed the Commissioners shall keep the money in deposit until the contesting claimants have their titles declared and obtain an order for payment.

Application of sections 243 to 246 where masonry houses interspersed.

**247. The mere fact that masonry buildings are interspersed in a block of huts shall not prevent action being taken with reference to such huts under sections 243 to 246.**

## NOTES.

The section is new and there is no corresponding section in the Bengal Municipal Act.

A municipality is competent to deal with a collection or block of huts under sec. 245 of B. M. Act even though within the area which is locally called a bustee there may be pucca buildings. *Narayan Munjari Dassi vs. Chairman, Howrah Municipality, 29 C.W.N. 445.*

In *F. W. Duke vs. Rameswar Malia, 26 Calcutta 811*, it was contended that under section 246 of B. M. Act (244 of this Act) the Commissioners had no power to order the removal of pucca privy, as it was not a hut and section 245 of the Act (243 of this Act) only applied to huts. The municipality could order the removal of the pucca privy under sec. 224 of B. M. Act and because they entitle their notice only under one section instead of two the whole proceeding could not be *ultra vires*.

The view that section 245 of the B. M. Act did not apply when the block of huts had pucca structure within it had long become obsolete and the present section makes legislative provision for it.

## BURIAL AND BURNING GROUNDS.

Registration of existing burial or burning grounds.

**248. Within three months from the date of the publication of a notification by the Local Government extending this and the ten next succeeding sections to any municipality, every place therein which is used as a burial or burning ground for corpses shall be registered as such by the owner or person in charge thereof in the office of the Commissioners, but no fee shall be charged for such registration.**

## NOTES.

The section corresponds to sec. 254 of B. M. Act.

"The provisions of the Bengal Act as to burial and burning grounds have been re-arranged to some extent. Section 255 of the present Act

(B. M. Act) ignores the existence of sec. 254 and questions have arisen as to whether the disused grounds referred to include registered grounds. Also the Act fails to provide for the registration of new grounds." Notes on clauses, para. 101.

This section and the next ten succeeding sections come into force after they are specially extended by notification for the purpose issued by the Local Government. After three months of the publication of a notification extending these provisions to any municipal area the registration of burial and burning grounds becomes compulsory but no fees are chargeable for such registration; after registration the municipality can regulate the indiscriminate burning or burials therein.

The penalty for non-registration of burial and burning grounds is prescribed by sec. 251.

The word "ghat" used in section 58 and the word "burning ghat" connote entirely different things.

The word "ghat" in sec. 30 of B. M. Act (sec. 58 of this Act) was not intended to include a "burning ground." Burial grounds which are placed substantially on the same footing as burning grounds were excluded from the operation of this section (sec. 58 of this Act) and other provisions were made applicable to them. Vide secs. 87, 98, 254 to 256 of B. M. Act. Chairman of Howrah Municipality *vs.* Kshetra Krishna Mitter, 38 Cal. 1290 (1908).

The notification of the Local Government is to be published in the gazette and the notification is then to be given wide circulation.

**249. The Commissioners may at their discretion at any time grant permission for the formation and making of burial or burning grounds, or for the renewed use of such grounds as, owing to disuse, have not been registered under the last preceding section, and when such permission has been granted shall cause such grounds to be registered.**

Permission to make or renew use of burial or burning grounds and registration of same

## NOTES.

The section corresponds to sec. 255 of B. M. Act.

The grant of permission for the formation and making of new burial and burning grounds, or for renewing the old and disused ones lies entirely at the discretion of the Commissioners; but after the grant of permission they are to be registered under this section.

Provision of places to be used as burial or burning grounds.

**250. The Commissioners at a meeting, may from time to time, out of the municipal fund, provide fitting places to be used as burial or burning grounds either within or without the municipality.**

### NOTES.

The section corresponds to sec. 259 of B. M. Act.

**Fitting places.**—"The question whether a place is a 'fitting' one or not for a burial or burning ground, must be determined with reference to the requirements of the community regarding the disposal of corpses and the general necessities of the case. It would depend on two sets of consideration, first on the municipal side, whether the place is by its nature and situation suitable for the purpose and for the community; and secondly, on the other side, whether it is likely to be a nuisance to the neighbourhood." J. Pargiter's B. M. Act, 2nd edition, page 265.

In a Madras case what is a "convenient and fitting place" for a burning ground was fully considered. Section 392 of the City of Madras Municipal Act (Act I of 1884) provided that the Municipal Commissioners "shall.....provide a sufficient number of convenient and fitting places for burial and burning grounds, either within or without the limits of the City and may acquire land for the purposes" and sec. 458 gave a right of action to any person aggrieved by the failure of the Commissioners to perform a duty imposed on them by the Act. Plaintiff was the owner of a bungalow, factory and garden in the neighbourhood of Madras. In 1896 the defendants, the Municipal Commissioners for the City of Madras, acquired land close to plaintiff's and opened a burial and burning ground thereon. Plaintiff alleged that his premises had in consequence thereof become unhealthy, insanitary and unfit for residential purposes, that he had been unable to work his factory and that his property had deteriorated in value. He accordingly sued for an injunction restraining the defendants from using the land acquired by them as a burial and burning ground, and for damages. No negligence was alleged or shown regarding the manner in which the burial ground had been used. There was some evidence that the burning ground was to some extent a source of nuisance to any one who occupied plaintiff's premises and that the market value of the premises had been depreciated by the opening of the burial ground. It was held by the High Court that the mere fact that the neighbouring landowner has sustained damage from the establishment of the burial and burning ground does not show that the site selected is not a "convenient and fitting place." In determining whether the use of a burning ground amounts to an actionable nuisance the fact

that the object of the burning ground is to provide a convenient and sanitary means of disposing of corpses in accordance with the general sentiments of the community has to be considered; this provision is absolutely necessary and it must necessarily be attended with some inconveniences. Held further that no actionable nuisance had been proved and even if proved the defendants were protected. *Muhammad Mohiuddin Sait vs. The Municipal Commissioners of the City of Madras*, 25 Madras 118. In the same ruling the principles quoted from several English cases may be conveniently studied in this connection.

"Now no doubt the use of property so as to cause substantial discomfort to neighbours by offensive smell (*Bramford vs. Turnley*, 31 L.J.Q.B. 286) or by producing large volumes of smoke (*Crump vs. Lambert*, L.R. 8 E.Q. 409) may give rise to an actionable nuisance, but as it is put by *Thesiger L. J.* in delivering the judgment of the Court of appeal in *Sturges vs. Bridgman* (L. R. 11 Ch.D. 852 at page 865), "whether anything is a nuisance or not is a question to be determined not merely by an abstract consideration of the thing itself, but in reference to its circumstances; what would be a nuisance in Belgrave Square would not necessarily be so in Bermondsey," 25 Madras at page 129.

"The general observations of *Pollock, C. B.* in his judgment in *Bramford vs. Tunrley* (31 L.J.Q.B. 286 at page 292)—although the learned judge differed from the majority of the Court upon the actual question under consideration—are no doubt good law. He observed "most certainly in my judgment, it cannot be laid down as a legal proposition or doctrine, that anything which under any circumstance, lessens the comfort or endangers the health and safety of neighbours must necessarily be an actionable nuisance. That may be a nuisance in Grosvenor Square which would be none in Smithfield Market. That may be a nuisance at mid-day which may not be a nuisance at mid-night. That may be a nuisance which is permanent and continual, which would be no nuisance if temporary or occasional only. A clock striking the hour or a bell ringing for some domestic purpose, may be a nuisance if unreasonably loud and discordant of which the jury alone must judge; but although not unreasonably loud, if the owner from some whim or caprice made the clock strike the hour every ten minutes, or the bell ring continually, I think the jury would be justified in considering it to be a very great nuisance. In general a kitchen chimney suitable to the establishment to which it belongs, could not be deemed a nuisance but if built in an inconvenient place or manner, on purpose to annoy the neighbours, it might, I think, very properly be treated as one. The compromises that belong

to social life and upon which the peace and comfort of it mainly depend will furnish an indefinite number of examples in which some apparent natural right is invaded or some enjoyment abridged," 25 Madras at page 180.

In another Madras case the District Magistrate promulgated an order prohibiting the people of Thirkodikaval from using their burning ground situated on the southern bank of the Cauvery and directing them to use other burning ground which had been provided. Certain persons in defiance of the order cremated a corpse at the spot interdicted and were convicted under section 188 and 290 I.P.C. but the conviction under sec. 188 was reversed on appeal and on an appeal against the acquittal and revision against the conviction under sec. 290 it was held that when persons entitled to use a particular spot dedicated for the communal purpose of cremation, use it for that purpose in a manner neither unusual nor calculated to aggravate the inconveniences necessarily incident to such an act as it is generally performed in this country; they cannot be convicted of a public nuisance on the ground that their act caused material annoyance and discomfort to persons near the place on the occasion referred to; it was further held that the order of the District Magistrate was not warranted by sec. 143 Cr. P. C. and there was no law under which a Magistrate could deprive a party entitled to use the existing cremation ground, to continue to use such ground for the purpose for which it was originally appropriated. The difficulties could only be met by extension of some section of the Municipal Act. *Q. E. vs. Saminadha Pillai*, 19 Madras 464.

**Within or without the municipality.**—The words "within or without the limits of the city" appearing in section 392 of the Madras Act I of 1884 must be read *secundum subjectam materiam* and with reference to the requirements of the community in connection with the disposal of corpses and the general necessities of the case. *Muhammad Mohiuddin Sait vs. Municipal Commissioners for the City of Madras*, 25 Madras 118.

The Municipal Commissioners can spend out of the municipal funds for the purpose of providing burial and burning grounds and they can be selected either within the municipal limits or outside.

Prohibition to bury  
or burn in unregistered  
grounds.

**251. (1) After the expiration of the three months mentioned in section 243 no corpse shall be buried or burnt otherwise than in a place which is borne on the register of the Commissioners as an open burial or burning ground, or has been provided by the Commissioners for the purpose; but the Commissioners may grant special permission for a corpse to be buried or burnt elsewhere.**

sec. 257

(2) Whoever, within a municipality, after the expiration of the said period, knowingly buries or burns, or causes, procures or suffers to be buried or burnt, any corpse in or on any ground not registered as a burial or burning ground, or which has not been provided by the Commissioners for the purpose, shall be liable to a fine not exceeding one hundred rupees.

## NOTES.

Sub-section (1) corresponds to sec. 257 and sub-sec. (2) corresponds to sec. 274 of B. M. Act.

When there are registered burial or burning grounds or when they are provided for by the municipality; all corpses should be disposed of there; or with the special permission of the municipality in any other place. Whoever disobeys these provisions or helps in disregarding them is punishable under sub-sec. (2). The prosecution will be made according to sec. 375.

Power to order certain burial and burning grounds to be closed

**252. (1) The Commissioners at a meeting may by a public notice order any burial or burning ground, whether registered under section 248 or provided under section 250, which is in their opinion dangerous or likely to be dangerous to the health of persons living in the neighbourhood, or to be offensive to such persons, to be closed from a date to be specified in the notice, and shall in such case, if no suitable place for burial or burning exists at a reasonable distance, provide a fitting place for the purpose.**

(2) When notice is issued ordering the closing of any burial ground under sub-section (1) private burial places in such burial grounds may be excepted from the notice, subject to such conditions as the Commissioners at a meeting may impose in this behalf:

Provided that the limits of such burial places are defined, and that they shall only be used for the burial of members of the family of the owners thereof.

## NOTES.

Sub-sec. (1) corresponds to sec. 256 of B. M. Act and sec. 285 of U. P. Act II of 1916. Sub-sec. (2) corresponds to sec. 256 (A) of B. M. Act.

When any burial or burning ground whether registered under sec. 248 or provided by the municipality under sec. 250, appears to the Commissioners to be dangerous or likely to be dangerous to the health of persons living in



the neighbourhood, or to be offensive to such people they can at a meeting order it to be closed and publish the notice as prescribed by sec. 356; but before closing any existing burial or burning ground the Commissioners must provide a fitting place for the purpose, if no suitable place is available in the vicinity. The Commissioners are to decide whether a burial or burning ground is dangerous or is likely to be dangerous to the health or is offensive to the persons living in the neighbourhood; and whether any suitable burning place is available at a reasonable distance and subject to the appellate order of the Local Government their decision is final.

**Public notice.**—The powers under this section must be exercised with due care and all the legal formalities must be strictly observed. The Commissioners before making an order under this section closing a certain burial or burning ground, must dispose of any objections under sec. 360 & 362 and then come to a decision which would be subject to an appeal under sec. 253. The procedure to be followed in giving notice is laid down in sec. 356 and the notice must also specify the date from which the closing order is to take effect.

See in this connection *Brindaban Chunder Roy vs. Chairman of Serampur 19*, W.R. 309 which was a case under sec. 79 of Act III of 1864 and in which it was held that the section did not authorise the Municipal Commissioner to close a burning ground which have been used for a long number of years, merely because they think that the burning of dead bodies is offensive. It is only when the Commissioners consider that any burning ghat or burial ground is in such a state as to be dangerous to the health of persons living in the neighbourhood thereof that they could act under the section.

The municipal authorities prohibiting the use of a burial ground must definitely specify the point of time from which the period fixed by them under that section is to run. *Lutfur Rahaman Nuskar vs. Municipal Ward Inspector 25 Cal. 492* which was a case decided on a corresponding section, viz., sec. 381 of the Calcutta Municipal Act.

Although the Commissioners by a notification can close a burial or burning ground, they can also leave private burial places within such burning or burial grounds unaffected on such conditions as they think fit to impose. If such private burial places are permitted to be so used when the rest of it is closed then their limits must be defined and they shall be used only for the burial of the members of the family of the owners.

Orders under this section are appealable under sec. 253. See also notes to sec. 373 which seems to provide for an appeal against orders under sec. 252. This clearly is an oversight as second appeals are nowhere provided in the Municipal Act.

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Appeals from order  
under section 252.

**253. Any person aggrieved by any order made by the Commissioners under the powers conferred upon them by the last preceding section may appeal to the Local Government, and the decision of the Local Government shall be final.**

## NOTES.

The section corresponds to sec. 256 (B) of B. M. Act.

An appeal lies to the Local Government against the orders of the Commissioners under sec. 252 closing a burial or burning ground.

Power to cause corpses to be burnt or buried according to the religious tenets of the deceased.

**254. After the expiration of not less than twenty-four hours from the death of any person, the Commissioners may cause the corpse of such person to be burnt or buried, and the expenses thereby incurred shall be recoverable as a debt due from the estate of such person. In every such case the corpse shall be disposed of, so far as may be possible, in a manner consistent with the religious tenets of the deceased.**

## NOTES.

The section corresponds to sec. 258 of B. M. Act.

Power to provide for burial of paupers free of charge.

**255. The Commissioners at a meeting may, from time to time out of the municipal fund, provide for the burial and burning of paupers free of charge within the limits of the municipality.**

## NOTES.

The section corresponds to sec. 260 of B. M. Act.

Power to license shops at burning grounds

**256. (1) The Commissioners may, from time to time, grant licences to persons applying for the same, for the sale at burning grounds of fuel and other articles used for the cremation of dead bodies, and in case any such licence is granted shall, at a meeting, prescribe a scale of rates for the sale of such articles; and any person not so licensed, who, within three hundred yards of any such burning ground, sells or offers for sale any such fuel or other articles, shall be liable to a fine not exceeding fifty rupees.**

(2) The Commissioners may, on good and sufficient cause, revoke or withdraw any such licence they may think fit, and any person to whom any such licence is granted, who charges for the sale of any such article at any higher rate than the rate fixed for such article in such scale, shall, at the discretion of the Commissioners, be liable to have his licence cancelled and shall be liable also to a fine not exceeding ten rupees.

#### NOTES.

The section corresponds to sec. 260 (A) of B. M. Act.

The Commissioners may grant licences for sale of fuel to be used in the cremation of dead bodies and when such licences are granted the scale of rates shall also be fixed at a meeting. No fees are chargeable for the grant of such licences. When such licences are applied for they cannot be refused but the scale of rates can be enforced.

Section 260 (A) of B. M. Act was never intended to be so applied as to enable the Municipal Commissioners to create an exclusive right in favour of any person to sell fuel for burning dead bodies. The municipality could not by a licence granted under the section create in favour of the person an exclusive right to employment as a cremation priest and to sell fuel in the burning ground. *Gour Mani Debi vs. Chairman of Panihati municipality* 14 C. W. N. 1057=12 C.L.J. 74. For prosecution see sec. 875.

Commissioners to provide fuel at burning grounds.

**257. At any burning ground provided by the Commissioners, the Commissioners shall make adequate arrangements for the sale of fuel and other articles used for the cremation of dead bodies.**

#### NOTES.

The section is new and there is no corresponding section in the B. M. Act. This section was not in the Original Bill of 1921 but it was put in by the recommendation of the Select Committee.

"The nuisance at burning grounds frequently arises from an inadequate supply of fuels and we have therefore made it obligatory on the Municipal Commissioners to arrange for the sale of fuels at any burning grounds provided by them. Other matters regarding burning or burial grounds can be included in by-laws." Report of the Select Committee para 72.

This section refers to burning grounds provided by the municipality under sec. 250 in which the Commissioners are bound to make arrange-

ments for fuel, etc; in other places they may grant licences for sale of fuel under sec. 256.

**258. The Commissioners at a meeting may make by-laws consistent with this Act controlling and regulating the use and management of burial and burning grounds and the disposal of corpses.**

Power to make by-laws.

### NOTES.

The section corresponds to sec. 350 (d) of B. M. Act.

The procedure to be adopted in framing by-laws is laid down in sec. 363 which must be strictly followed to give legal validity to them.

**Consistent with this Act:**—See notes to sec. 353.

### OFFENSIVE AND DANGEROUS TRADES, OCCUPATIONS OR PROCESSES.

**259. (1) Within such local limits as may be fixed by the Commissioners at a meeting, no place shall be used without a licence granted by the Commissioners after such local enquiry as they may deem necessary, which shall be renewable annually, for any of the following trades or businesses, namely:—**

Power to prohibit certain offensive and dangerous trades without licence.

- (i) the skinning or disembowelling of animals;
- (ii) storing hides, horns or skins;
- (iii) boiling or storing offal, blood, bones or rags;
- (iv) melting tallow;
- (v) tanning, or the manufacture of leather or leather goods;
- (vi) oil-boiling;
- (vii) soap-making;
- (viii) dyeing;
- (ix) burning bricks, tiles, pottery or lime;
- (x) storing or selling coal;
- (xi) storing kerosine, petroleum, naphtha, or any inflammable oil or spirit;
- (xii) trading in, or storing hay, straw, timber, wood, thatching grass, jute or other dangerously inflammable material;
- (xiii) manufacture of lac; and

(xiv) any manufacture, process or business from which offensive or unwholesome smells may arise, or which has been declared by the Local Government by notification to be dangerous or offensive.

(2) A licence for any of the purposes mentioned in sub-section (1) shall not be withheld unless the Commissioners have reason to believe that the business which it is intended to establish or maintain would be offensive or dangerous to persons residing in or frequenting the immediate neighbourhood.

(3) The Commissioners at a meeting may, subject to a maximum to be fixed by the Local Government, levy a fee in respect of any such licence and the renewal thereof, and may impose such conditions upon the grant of any such licence as they may think necessary.

(4) The grant of a licence for the purposes mentioned in clause (xi) of sub-section (1) shall be consistent with the provisions of the Indian Petroleum Act, 1899, and no such licence shall be granted unless the said provisions have been complied with by the applicant for the licence.

#### NOTES.

The section corresponds to sec. 261 of B. M. Act. Sub-clause (i) corresponds to sec. 298 (2) (G) (a) (ii) of U. P. Act II of 1916.

Sub-clause (v) corresponds to sec. 298 (2) (G) (a) (vi) of U. P. Act II of 1916; and sub-clause (ix) corresponds to sec. 262A of B. M. Act. Sub-section (4) corresponds to sec. 298 (G) (a) of U. P. Act. II of 1916.

“Certain additions are proposed in the list of offensive and dangerous trades and occupations. The storage and selling of coal is included as it has been held that coal would not be included in “other dangerously inflammable material”. Places for storing horns, hides and skins should be liable to licence as the storing is apt to give rise to offensive smells. On the other hand, mention of lodging houses and *sarais* is omitted as inappropriate to this clause.” Notes on clauses page 102.

Slaughter-houses are dealt with in sec. 279 in Chapter on “Food, Drinks and Drugs”.

The heading “offensive and dangerous trades” is manifestly not exhaustive of the matters dealt with in the succeeding sections, nor can it be taken to restrict the plain terms of the section. Queen Empress *vrs.* Ayyakannu Mudali, 21 Mad. 293.

The list given in clauses (i) to (xiii) do not exhaust all the matters sought to be brought under the control by the section, and so by clause (xiv) the Local Government is empowered by notification to declare any manufacture process or business from which offensive or unwholesome smells may arise, as dangerous or offensive, and thereafter for such manufacture, etc., no place within the local limits fixed can be so used without a licence from the Commissioners.

The section brings under the Commissioners' control places which are used for any of the specified purposes mentioned in the section by requiring them to be licenced.

**Within such local limits.**—Before the provisions of the section can be applied; there must be a resolution of the Commissioners at a meeting fixing the local limits within which licences should be required under sec. 261 B. M. Act (sec. 259 of this Act) for offensive and dangerous trades. The language used is wide enough to enable the Commissioners of a Municipality to apply in their discretion the section to all places within Municipal limits or the entire area within the municipal boundaries. *Syed Mokram Ali vs. The Cuttack Municipality*. 17 C.W.N. 531=18 I.C. 651.

The Municipal Commissioners have the right to fix the whole area of the municipality as the local limits within which any business or trade which they consider offensive or dangerous shall not be established or maintained without a licence. *Madaran Kasab vs. K. E. 4 Pat. 311 (I.L.R.)=6 P.L.T. 528*.

**Shall be used.**—These words are general and it does not matter how long the place may have been so used or whether it is newly used. The words "shall be used for any of the following trades or businesses" mean "shall be used and employed as a place for the carrying on of the offensive or dangerous trade or business mentioned in the section." The person using the premises is contemplated as a single individual—the person who carries on the business—and the offence of using the premises is treated as an offence in its nature continuous. The master and owner of the business whether tallow-melter, soap-boiler, dyer, tanner or potter is treated as the person using the premises and he is the person who is required to take out a licence, not his servants employed in the operations there. *Municipal Commissioners for Suburbs vs. Zamir*, 16 W.R. Cr. 4.

**Renewable annually:**—has reference to the definition of the term "year" in sec. 3 (32).

**Clause (i) and (ii).**—The exercise of a trade for the storage of hides horns and skins cannot be founded upon the non-establishment of a

slaughter-house by the Municipality under sec. 279 of the B. M. Act. *Madaran Kasab vs. K. E. 4. Pat 311 (I.L.R.)=6 P.L.T. 528.*

**Clause (ix).**—The words in the corresponding section of the B. M. Act were “kilns for making bricks, pottery, tiles or lime”.

The definition of a “ kiln ” pointed to a structure which is of a permanent nature. The process used for making bricks (*e.g.*, by panjas or clamps) did not amount to using the place as a kiln and it was held that no offence had been committed by not taking a licence. Superintendent of Legal Affairs, Bengal *vs.* Tailokhya Nath Chatterji. 26 C.W.N. 926=49 Cal. 1014=1922 Cal. 194 (A.I.R.).

The words used in this clause have set at rest the decisions about the meaning of the word “kiln”.

The burning of bricks referred to in this section indicates burning of bricks for trade or business and not for private use. It was held in a case that the corresponding section 77 of Act III of 1864 (B.C.) refer to the burning of bricks for trading purposes and not to cases where bricks are made for the particular use of the person burning them; such person need not take out a licence for that purpose. *Sriram Chandra Halder vs. Chairman of Howrah Municipality*, 20 W. R. 65 Cr.

This ruling seems to be applicable in view of the language used in this clause.

The omission in this Act of a provision similar to sec. 262.A of B. M. Act also point to the same conclusion.

The burning of bricks for private use can be regulated by by-laws framed under sec. 264(d).

**Clause (x)** is new.—“ The storage and selling of coal is included as it has been held that coal would not be included in other dangerously inflammable material”. Notes on clauses para 102 quoted in full above.

The storage of coal for trade or sale requires a licence but not storage for one's own use.

**Clause (xi).**—See notes to sub-section (4) below.

**Clause (xii).**—The word ‘ timber ’ did not find a place in the corresponding sec. 261 of B. M. Act.

The word ‘ wood ’ in sec. 261 of the B. M. Act was held to include timber; that a timber yard was a yard or depot for trade in wood within the meaning of this section and required a licence. The concluding words in the section ‘ or other dangerously inflammable material ’ did not limit the application of the preceding words ‘ hay, straw, wood, thatching grass,

jute. *King-Emperor vrs. Tar Muhammad* Jan, 6 P.L.J. 1 -2 P.L.T. 722=85 I.C. 827.

**Dangerously inflammable material:**—"This section is repealed in so far as it entitles the Commissioners to levy fees in respect of premises licensed as depots for hay, straw, wood, rags, jute or other dangerously inflammable material, which are licensed and used as ware-houses under Bengal Act I of 1898—see Bengal Act I of 1898, sec. 46 and sec. 46 (a)". Justice Pargiter's B. M. Act, Page 269.

**Clause (xiv).**—This clause applies to two classes of things, any manufacture, process or business from which offensive or unwholesome smells may arise, or any other manufacture process or business which has been declared by Local Government to be dangerous or offensive.

In a rice mill within a certain municipality the water, in which the paddy was steeped, was offensive, when it flowed from the drain but not so offensive as when it came into contact with the stagnant water of the municipal drain and the finding was that the flow of a large quantity of filthy water was the direct cause of the bad smell, it was held that the finding was sufficient to bring the case within the category of places of business from which unwholesome or offensive smells may arise and therefore within the purview of sec. 261 B. M. Act, which covers not only the cases which are *per se* offensive or noxious but also a manufactory or place of business from which offensive or unwholesome smells may arise. *Gobinda Chandra Mullick vrs. Chairman, Hooghly and Chinsurah Municipality*, 26 C.W.N. 994=85, I.C. 518.

The wording of the present section is in accordance with the gist of the rulings mentioned above and it includes manufacture, process or business and also manufactories or places of businesses from which offensive or unwholesome smells may arise.

Vitiating the atmosphere so as to make it noxious to health also constitutes an offence under sec. 278 I.P.C.

Infringements of the provisions of this section are punishable under sec. 268. They might also constitute public nuisances within the meaning of sec. 268 of the Penal Code and be punishable under sec. 290 and if continued under sec. 291 of the Code. Infringements also constitute particular offences as noted above; and negligence with respect to poisonous or explosive substances may amount to an offence under sec. 284 or 286 of the Penal Code.

**Sub-section (2):**—According to this sub-section the rule is that the licence shall be granted in all cases and it is only when the Commissioners



have reason to believe that the business would be offensive or dangerous to person residing in or frequenting the immediate neighbourhood that they can withhold it. It is for them to decide the question according to the principles of public health, and sanitation.

When the Commissioners in refusing a licence to store hides, horns and skin had not given any reasons for refusal it was contended that as the refusal was unaccompanied by any reason, such refusal was illegal. It was held it would have been much more courteous if the municipality had given it only reason which it could give for the refusal of the licence, *viz.*, that it was a trade of a character offensive to persons residing in the neighbourhood, but inasmuch as the provisions of sec. 259 (2) of the Act themselves supply the only reasons for which refusal of certain licences can be made the omission on the part of the Commissioners to give the only reason that they could give for the refusal to renew a licence cannot be regarded as making such refusal illegal. *Madaran Kasab vrs. King-Emperor*, 4 Patna 311 (I.L.R.) = 6, P.L.T. 528.

Sub-section (2) can only come into operation after the local limits are fixed by a resolution under sub-sec. (1).

For the rules as to licences and suspension or revocation of licences see secs. 351 and 352.

**Sub-section(3):**—The Commissioners at a meeting can levy fees for licences and renewals thereof for any of the purposes mentioned in sub-section (1) subject to the maximum prescribed for such fees by the Local Government, but they may impose such conditions upon such grant as they think necessary.

The Government of Bengal have issued the following general instructions to be followed in these matters:—“A distinction should in the first place be drawn between dangerous trades and offensive trades and only those should be included in the latter category, which cause actual annoyance or discomfort to persons living in the neighbourhood and which can equally be carried on outside municipal limits. In respect of these the Lieutenant-Governor has no objection to fees being levied at such rates as will tend to discourage the establishment of such industries within municipalities. In the case of trades which contain some element of danger (such as the danger from fire which attends on the establishment of *depôts* for inflammable materials), but which it is not desirable to drive outside municipal limits, inasmuch as they can with suitable precautions be carried on within those limits without causing annoyance or risk to the neighbours, the fee levied should not be much in excess of the cost of main-

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taining the supervision necessary to secure that such precautions are taken. Bengal Government Municipal Circ. No. 6T-M and No. 128T-M of 10th June, 1895.

The fee leviable under this section is only a fee in respect of a licence to use a place for one of the purposes specified in sub-sec. (1).

The Government has further informed municipalities that this section gives them no power to levy a tax on the products of the manufacture carried on under a licence under this section. Letter (Munl.) No. 2057—M., dated 23rd June, 1898.

Farming out by a municipality of its right to collect fees on the slaughter of animals, which the municipality is entitled to levy under sec. 191 of Madras District Municipality Act (IV of 1884) is unauthorised and *ultra vires*. A contract of lease which has the effect of farming out such a right is void and unenforceable under secs. 11 and 23 of Contract Act as being far beyond the competency of municipal corporation to enter into and therefore prohibited. Held, that any amount due to the municipality under such a contract cannot be recovered. The right of farming out is not necessary to the exercise of the right of levying, as such fees may be naturally and easily collected by municipal subordinates. The fact that there is no express power to farm out tolls negatives an implied power to farm out other kinds of fees. The Municipal Council Kumbakonam *vs.* Abbahar Saheb, 36 Madras 118.

**Sub-section (4):**—The Indian Petroleum Act (Act VIII of 1899) contains provision for the import, possession, transportation of petroleum and other substances. Petroleum as defined in that Act includes rock oil, Rangoon oil, kerosine, naptha, etc., and 'dangerous petroleum' means petroleum having its flashing point below 76 degrees of Fahrenheit's thermometer. Sec. 9 of the Act lays down that the Local Government with the previous sanction of the Governor General in Council shall make rules for the grant of licences to persons to possess or transport petroleum. By rules under the Act the municipality has been granted power to grant licence under sec. 259 for ordinary petroleum but the municipality has no authority to grant any licence for dangerous petroleum, *e.g.*, petrol which can be granted only by the Collector if the quantity is below 40 gallons and by the Local Government if it exceeds 40 gallons. Before granting any licence under clause (ix) the Commissioners are to see that the conditions laid down under the Indian Petroleum Act about them have been fulfilled and they are then to grant licences under this section. In the case of dangerous petroleum a licence from the Collector is first to be obtained and

When another licence from the municipality under this section has to be obtained. In the case of other petroleum not coming under the definition of 'dangerous petroleum' only one licence from the municipality is required.

Power to order the carrying on of dangerous and offensive trades to be discontinued.

**259. (1) If it is shown to the satisfaction of the Commissioners at a meeting that any place licensed under section 259 is a nuisance to the neighbourhood they may, notwithstanding anything contained in the said section, give notice to the occupier to discontinue the use of such place within one month after the date of such notice :**

Provided that in this case the Commissioners shall refund so much of the fee levied under the last preceding section as may be proportionate to the unexpired portion of the year for which the licence was granted.

**(2) Any person, who within a municipality, after the expiration of the time specified in a notice issued by the Commissioners under the provisions of sub-section (1), uses or permits to be used, the place specified in such notice for any trade or business mentioned in section 259, shall be liable to a fine not exceeding two hundred rupees, and to a further fine not exceeding forty rupees for each day during which the offence is continued after he has been convicted of such offence.**

#### NOTES.

Sub-section (1) corresponds to sec. 262 and sub-section (2) corresponds to sec. 277 of B. M. Act.

After a licence is granted under sec. 259 the Commissioners can compel the licensee to discontinue the business in the place if it in their opinion is a nuisance to the neighbourhood.

The Commissioners are first to be satisfied and then at a meeting, they must record a resolution that they consider the trade or business in question to be a nuisance to the neighbourhood and then they can proceed under this section. If they proceed under this section they must also refund proportionate licence fee they had received.

A previous sanction to the establishment of a trade does not entitle the proprietors to continue the business after it has become a public nuisance to the neighbourhood. No one has a right to corrupt the air of a particular locality by the exercise of a noxious trade, simply because, at the commencement of the nuisance no person was in a position to be

injured by it; and no prescriptive right can be acquired to maintain, and no length of enjoyment can legalise a public nuisance involving actual danger to the health of the community. The Municipal Commissioners of the Suburbs of Calcutta *vs.* Muhammad Ali and another, 16 W.R. 6 Cr.

Each case must be decided on the merits and no general order of summary cancellation of licences for certain trades in a certain area can be passed under this section. See Syed Makram Ali *vs.* Cuttak Municipality, 17 C. W. N. 581 and also Madaran Kasab *vs.* King-Emperor, 4 Patna 311 (I.L.R.)=6 P.L.T. 528.

The penalty for disobedience of the notice under sub-section (1) is prescribed by sub-section (2). For the procedure for inflicting a daily fine, see notes to sec. 103.

An order under sub-section (1) is appealable to the Commissioners under sec. 373.

See sec. 375 regarding prosecutions.

Licensing of places  
 for keeping horses and  
 cattle.

**261. (1) Within such limits as the Commissioners at a meeting may determine, no cartman, livery stable-keeper or keeper of vehicles plying for hire shall keep horses, ponies or cattle for the purposes of trade or business except in a place licensed by the Commissioners.**

**(2) The Commissioners may license places for such purpose, and may levy a fee not exceeding one rupee on the issue and renewal of any such licence. Such licence shall be renewed in the first and seventh month of each year.**

**(3) It shall be in the discretion of the Commissioners at a meeting to grant any such licence subject to such conditions as they may think fit.**

#### NOTES.

The section corresponds to sec. 363 of B. M. Act.

The Commissioners at a meeting are first to determine the limits within which no cartman, livery stable keeper or keeper of vehicles plying for hire shall keep the animals for the purpose of trade or business except in a place licensed by them for the purpose. After the limits are fixed the Commissioners may issue licences for such places for a fee of rupee one for every half year; the licences are renewable every six months. The Commissioners may also grant licence on certain conditions as they think proper to impose.

**Shall keep.** The keeping of the animals must be for the purposes of trade or business and there must be regular use of the place as such in order to necessitate the obtaining of a licence. A mere temporary user of a place for keeping animals does not constitute an offence. *Emperor vs. Mayandi Konan*, 30 Madras 220. For penalty for failure to take out a licence and for breach of conditions see sec. 263.

When a property is leased out it is the lessee who ought to obtain a licence for keeping animals for profit and not the owner. *Abhoy Charan Das vs. G. Fuller*, 2 C.W.N. 289.

**262. (1) Within such limits as the Commissioners may direct, no person shall keep any pig-sty adjoining or near a road unless it is shut out therefrom by a sufficient wall or fence, and in no place within such limits shall more than ten pigs or more than twenty sheep or goats be kept without the written permission of the Commissioners.**

**(2) The Commissioners may charge an annual fee not exceeding two rupees for such permission, and may impose such conditions in respect of such permission as they may think necessary.**

#### NOTES.

The section corresponds to sec. 225 of B. M. Act.

Within the limits determined by the Commissioners at a meeting all pig-stys situated on public roads shall have to be walled round or sufficiently fenced from the public view and even in such places no more than a limited number of them, *viz.*, 10 pigs or 20 sheep or goats can be kept; and if any person wants to keep more he must obtain the written permission of the Commissioners for the purpose, the Commissioners may charge a fee of rupees two annually for such permission and can also grant such permission on such conditions as they think proper to impose.

The words used in the section is 'permission' and not 'licence.' The reason seems to be that there is no absolute prohibition for keeping a limited number of the animals in a place without any permission, while it is only when the number exceeds the limit that such permission has to be obtained.

Offences against this section are punishable under sec. 263 (3).

#### Penalties.

**263. Any person who within a municipality—**

**(1) without a licence uses any place for any of the purposes specified in section 250 or section 261, or**

(3) being a holder of a licence under 259 or section 261, breaks any condition of such licence or

(3) keeps any pig-sty, pigs, sheep or goats contrary to the provisions of section 262,

shall be liable to a fine not exceeding fifty rupees, and to a fine not exceeding ten rupees for every day during which the offence is continued after he has been convicted of such offence.

#### NOTES.

The section corresponds to sec. 273 (2), (3) and (5) of B. M. Act.

The section prescribes the penalties for offences against secs. 259, 261 and 262. The prosecution will be under sec. 375.

**Sub-section (1).** The word 'uses' means 'uses' and employs the premises as a place for carrying on of the offensive trades mentioned in the section. The person using the premises is contemplated as a single individual—the person who carries on the business—and the offence of using the premises is treated as an offence in its nature continuous. In all instances mentioned the master and owner of the business whether tallow melter, soap boiler, dyer, tanner or potter is treated as the person using the premises. No one would construe the section as imposing a penalty on the servants of such persons employed in any operations necessary for the purpose of carrying on the offensive trades mentioned therein. No person is liable to a penalty under the section except a person who uses a place or building as a slaughter house either by letting out for such purpose or by employing servants and others for the purpose of killing cattle therein. No doubt, if a number of butchers were to combine together and hire a slaughter house for the purpose of carrying on business and slaughtering there at a weekly, monthly or even daily rent, each and all of them might be punished. Municipal Commissioners for the Suburbs of Calcutta *vs.* Zamir Sheikh and others, 16 W.R. 4 Cr. This was a case under sec. 1 of Act VII of 1865 (B.C.) which corresponded to sec. 261 of B. M. Act and sec. 261 included a slaughter house as one in the list of offensive trades (slaughter houses have been omitted from sec. 259 of the present Act) but the principle quoted above seems to be well applicable to the trades and businesses mentioned in the present sec. 259. See also in this connection Queen Empress *vs.* Ayya Kannu, 21 Madras 298 cited under sec. 259 *ante*.

For the procedure for inflicting daily fine see notes to sec. 108.

Power to make by-laws regulating places used for offensive trades, etc.

**234. The Commissioners at a meeting may make by-laws consistent with this Act—**

- (a) providing for the inspection and regulation of the conduct of business in a place used for any of the purposes mentioned in section 258, so as to secure cleanliness therein, or to minimize any injurious, offensive or dangerous effect arising or likely to arise therefrom;**
- (b) regulating or prohibiting, for the purpose of preventing danger to the public health, the stalling of horses, camels, cattle, swine, donkeys, sheep or goats;**
- (c) prohibiting in any specified road or area, the residing of public prostitutes and the keeping of a brothel, or the letting or other disposal of a house or building to public prostitutes or for a brothel; and**
- (d) generally, for the prevention of nuisances affecting the public health, safety or convenience.**

#### NOTES.

The section corresponds to sec. 298 (2) (G) and 298 (2) I (a) of the U. P. Act 11 of 1916.

"It is proposed to give the Commissioners wide by-law making power to control dangerous and offensive trades and occupations, including a power to prohibit brothels in any specified road or area." Notes on Clauses para 108.

**Consistent with this Act.**—For a similar use of the phrase see secs. 19, 42, 81, 195 and the notes to those sections. The words used in sec. 350 of the B. M. Act which gave the power under the Act to make by-laws were 'not inconsistent with this Act.' The words "not inconsistent with this Act were discussed in a Bombay case in which the words were held to mean 'not inconsistent with the aim, scope and object of the Act as shown by its provisions.' By-laws are inconsistent with the Act only if they alter and thereby contradict the Act. *Tribhuban vs. Ahmedabad Municipality*, 27 Bombay 221 (240 and 256).

The word 'consistent with this Act' means 'consistent with the aim, scope and object of the Act as shown by its various provisions.'

The procedure to be observed in framing by-laws is laid down by secs. 354 and 356.

Under sec. 391 until new by-laws under this Act are framed the existing by-laws will be in force.

**Clause (d).**—The burning of bricks for one's private use can be regulated by by-laws under this clause. See sec. 259 (ix) notes and Sriman Chandra Haldar *vs.* Chairman of Howrah Municipality, 20 W.R. 65 Cr.

# INFECTIOUS AND CONTAGIOUS DISEASES.

“Clauses 267 to 275 (secs. 265 to 267)—a set of clauses taken mainly from the Punjab Municipal Act (Act III of 1911) and in part from the United Provinces Municipal Act (Act II of 1916) and the Public Health Act (Scotland), the Scotch Education Act and the Calcutta Municipal Act has been inserted with the object of giving the Commissioners greater powers in the case of dangerous infectious and contagious diseases.” Notes on Clauses para 104.

The other clauses in the Bill, *viz.*, Clause 269 which prescribed a penalty for letting infected houses, clause 271 which related to acts done by persons suffering from certain diseases; clause 272 (which was based on sec. 56 of the Public Health Act, Scotland) which prohibited the exposure of persons suffering from infectious diseases; clause 273 which related to power of entry for purpose of preventing spread of diseases; clause 274 which related to power to close markets and clause 275 (which was based on Scotch Education Act sec. 30) which related to power to close schools were omitted from the Act as the Select Committee reported that “these provisions were far too advanced for the municipalities of Bihar and Orissa and many of them cannot be enforced.” Report of the Select Committee, para 74.

Clause 269 was omitted as too drastic. Clause 271 was omitted as the Select Committee reported “we feel doubtful whether the section could be enforced and consider that the provisions of asylums and the compulsory segregation of lepers as provided for in the Lepers Act is a better preventive of the spread of the disease.” Report of the Select Committee, para. 77.

Clause 275 was omitted as the Select Committee said “we consider that the manager of schools will without compulsion close schools in times of epidemic.” Report of the Select Committee, para. 78.

**265.** In any municipality to which this section may at any time be extended by the Local Government, when any person suffering from plague, cholera or small-pox is found to be—

Removal to hospital of patients suffering from infectious diseases.

(a) without proper lodging or accommodation, or



(b) living in a sarai, dharamsala or other public hostel, or  
 (c) living in a room or house which neither he, nor any one of whom he is a dependent, either owns or pays rent for,  
 the Commissioners, by any person authorized by them in this behalf, may on the advice of a Health Officer or any registered medical practitioner, remove the patient to any hospital or place at which persons suffering from such disease are received for medical treatment.

#### NOTES.

The section corresponds to sec. 142 of Punjab Municipal Act (Act III of 1911) and sec. 280 of U.P. Municipal Act (Act II of 1916). This section will apply to the municipalities to which it is extended by the Local Government. After this section is extended to any municipality, a person suffering from plague, cholera or small-pox when he is without proper lodging or accommodation or living in sarais, dharamsalas or public places or other public hostels or found in a place for which neither he nor any one whose dependent he is pays rent, the Commissioners may remove him to a hospital or segregation camp provided for patients suffering from the diseases on the advice of a Health Officer or any other registered medical practitioner.

**Registered Medical Practitioner.** A practitioner registered under the Bihar and Orissa Medical Act (B. and O. Act II of 1916) which is an Act to provide for the registration of medical practitioners in Bihar and Orissa.

Disinfection of buildings and articles.

**286. (1)** If the Commissioners are of opinion that the cleansing or disinfecting of a building or any part thereof, or of any article therein, which is likely to retain infection, will tend to prevent or check the spread of any disease, they may by notice require the owner or occupier to cleanse or disinfect the same in the manner and within the time prescribed in such notice.

**(2) If—**

(a) within the time specified as aforesaid from the receipt of the notice, the person on whom the notice is served fails to have the building or part thereof or the article disinfected as aforesaid within the time fixed in the notice, or

(b) the occupier or owner, as the case may be, gives his consent, the Commissioners may from the municipal fund cause the building or part thereof and articles to be cleansed and disinfected.

## NOTES.

The section corresponds to sec. 148 of Punjab Municipal Act (Act III of 1911) and sec. 277 of U. P. M. Act (Act II of 1916).

This section applies to all municipalities in which this Act applies and no extension of it by the Local Government is necessary. The Commissioners can disinfect buildings and articles which are likely to spread infection at their own cost from the municipal fund.

Provision of places and appliances for disinfection.

**267. In any municipality to which this section may be extended by the Local Government, the Commissioners may—**

- (a) provide proper places, with all necessary attendants and apparatus, for the disinfection of conveyances, clothing, bedding or other articles which have been exposed to infection,
- (b) cause conveyances, clothing or other articles brought for disinfection to be disinfected free of charge or subject to such charges as may be approved by them, and
- (c) direct any clothing, bedding or other articles likely to retain infection to be disinfected or destroyed, and shall give compensation for any article destroyed under this clause.

## NOTES.

The section corresponds to sec 145 of Punjab Municipal Act (Act III of 1911).

This section will not apply to any municipality unless it is so extended by the Local Government; after the section is extended the Commissioners can provide themselves with the necessary attendants and apparatus for disinfection.

## VACCINATION.

Health officer to exercise power of Superintendent of Vaccination.

**268. A Health Officer appointed by the Commissioners shall, within the municipality to which he is appointed, subject to such restrictions as the Local Government may impose and to the general control of the Civil Surgeon of the district, exercise the powers and perform the duties of a Superintendent of Vaccination.**

## NOTES.

This section is a new one and there is no corresponding section in any other Municipal Act in India.

## EXTINCTION AND PREVENTION OF FIRE.

Establishment and  
maintenance of fire-bri-  
gade.

**266.** For the prevention and extinction of fire, the Commissioners at a meeting may resolve to establish and maintain a fire-brigade and to provide any implements, machinery, means of communicating intelligence or supply of water which the Commissioners may think necessary for the efficient discharge of their duties by the brigade.

## NOTES.

"The clauses relating to the extinction of fire follow the provisions of Bengal Act, but following the United Provinces Act power is given to require the removal of existing roofs and walls made of inflammable materials, on the payment of compensation and to inspect and search for inflammable materials in excess of the authorised quantity. Also a wide by-law making power is given." Notes on clauses para 105.

The section corresponds to sec. 349.A. of B.M. Act.

The section enables the Commissioners to give effect to sec. 68 cl. (xix). This section and the next following section are in force in all municipalities governed by this Act, the Commissioners may by a resolution at meeting establish and maintain a fire brigade and provide implements, machinery, means of communicating intelligence and supply of water to make it as efficient as possible.

Power of fire-bri-  
gade and other persons  
for suppression of fires.

**270. (1)** On the occasion of a fire in a municipality, any Magistrate, any Municipal Commissioner, any member of a fire-brigade maintained by the Commissioners, then and there directing the operations of men belonging to the brigade, and (if directed so to do by a Magistrate or by a Municipal Commissioner) any Police Officer above the rank of constable may—

(a) remove or order the removal of any person who by his presence interferes with or impedes the operations for extinguishing the fire, or for saving life or property;

(b) close any street or passage in or near which any fire is burning;

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(b) for the purpose of extinguishing the fire, break into or through, or pull down, or use for the passage of any hose or other appliance, any premises;

(d) cause mains and pipes to be shut off so as to give greater pressure of water in the place where the fire has occurred;

(e) call on the persons in charge of any fire-engine to render such assistance as may be possible; and

(f) generally take such measures as may appear necessary for the preservation of life or property.

(2) No person shall be liable to pay damages for any act done by him under sub-section (1) of this section in good faith.

#### NOTES.

The section corresponds to sec. 349 (B) of B. M. Act.

The section is quite general and applies to all municipalities independently of sec. 269. Irrespective of whether there is any establishment and maintenance of a fire brigade, on the occasion of a fire, any Magistrate, or Municipal Commissioner can act under this section for suppression of the fire and can direct and control the operation. A Magistrate or Commissioner can also direct a police officer above the rank of a constable to do any of the acts authorised by the clauses and when a fire brigade is maintained any member of it can do any of the things authorised by the section.

**Clauses (a) to (f).** Empowers the persons mentioned in sec. (1) to do one or other of the things enumerated therein, to facilitate the suppression of the fire and prevent it from extending to the neighbouring houses.

**271. (1) The Commissioners at a meeting may by public notice direct that, within certain limits to be fixed by them, the roofs and external walls of huts or other buildings shall not be made or renewed with grass, mats, leaves or other dangerously inflammable materials without the consent of the Commissioners in writing.**

Power as to inflammable structures.

**(2) The Commissioners may at any time by written notice require the owner of a building which has an external roof or wall made of any such material as aforesaid to remove such roof or wall within such reasonable time as shall be specified in the notice, notwithstanding that a public notice under/sub-section (1) has not been issued, or that such roof or**

wall was made with the consent of the Commissioners or before the issue of such public notice, if any:

Provided that, in the case of any such roof or wall in existence before the issue of such public notice or made with the consent of the Commissioners, the Commissioners shall make compensation for any damage caused by the removal which shall not exceed the original cost of constructing the roof or wall.

(3) Any person who without such consent as is required by sub-section (1), makes or renews or causes to be made or renewed, or in disobedience to a notice given under sub-section (2) suffers to remain a roof or wall of such material as aforesaid, shall be liable to a fine not exceeding twenty-five rupees, and to a further fine not exceeding ten rupees for every day on which the offence is continued after the date of the first conviction.

#### NOTES.

The section corresponds to sec. 257 of U. P. Act II of 1916 and sec. 236 of B. M. Act.

**Public notice.**—As to how they are to be given see sec. 356 and notes thereto.

The Commissioners at a meeting must fix the limits within which the roof and external walls of huts or other buildings should not be made or renewed with grass, mats, leaves or other dangerously inflammable material without their consent in writing; and then by a public notice issue directions to the people. By this section the Commissioners can prevent construction and renewal of houses with roofs of inflammable materials in the areas which are more liable to outbreaks of fire on account of the crowding together of huts composed of inflammable materials and also on account of the situation and peculiarity of the trades in the locality.

The words "shall not be made" means that after the resolution fixing the limits construction of huts with roofs of inflammable materials 'shall not thereafter be erected' which are the words used in the corresponding section 236 of B. M. Act.

A renewal whether of any portion of a roof, or of the whole roof must not be made of any inflammable material. Renewal means 'made new again' and includes whether the renewal is of the whole or a portion of a roof. Chairman of Howrah Municipality vs. Montanee Bewa, 24 W.R. 70 Cr.

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"Renewed" includes repairing. *Queen Empress vrs. Subbanna*, 19 Madras 241.

**Sub-section (2).**—Even if there is no public notice issued under sub-sec. (1) the Commissioners can by written notice direct the removal of a roof or wall made of inflammable materials, whether it was built with the consent of the Commissioners or built previous to the issue of any public notice, within a time specified. But in both these cases the Commissioners will have to pay compensation to the persons concerned for the damages which shall not exceed the original cost of construction of the roof or walls.

Actions under this sub-section can be taken by the Chairman only and need not be taken by the Commissioners at a meeting.

Sub-section (3) provides the penalty for non-compliance with the provisions of sub-secs. (1) and (2).

Prosecution should be according to sec. 375. For the procedure for inflicting daily fine see sec. 103.

**272. (1) The Commissioners may, without notice and at any period of the day or night, enter into and inspect a house or building which is suspected to contain petroleum, or other inflammable material, in excess of the quantity permitted to be kept in such house or building under the conditions of a licence granted under section 259.**

Power to search for inflammable material in excess of authorised quantity.

**(2) Should any such excess quantity of such material be discovered, it may be seized and held subject to such order as a Magistrate may pass with respect to it.**

**(3) If the Magistrate decides that the material seized was stored in the house or building contrary to the conditions of such licence, he may pass an order confiscating the same.**

**(4) Subject to any provision of, or made under, this or any other enactment, the material so confiscated may be sold by order of the Magistrate, and the proceeds, after defraying the expenses of such sale, shall be credited to the municipal fund.**

**(5) No order of confiscation under this section shall operate to prevent any other criminal or civil proceedings to which the person storing the material in excessive quantity may be liable.**

## NOTES.

The section corresponds to sec. 268 of U.P. Act II of 1916.

The house or building which can be inspected under sub-sec. (1) is a house or building which had been licensed under sec. 259 cl. (xi). When any quantity in excess of the quantity which the licensee can possess is found on inspection on any premises licensed for such purpose the excess may be seized and dealt with according to the orders of the Magistrate. If any order for confiscation is passed such order will not prevent civil or criminal proceedings being taken against the man under the law.

Stacking, etc., of  
inflammable materials.

**273. The Commissioners may, subject to the provisions of section 259, where it appears to be necessary for the prevention of danger to life or property, by public notice prohibit all persons from stacking or collecting hay, straw, timber, wood, thatching grass, jute or other dangerously inflammable materials, or from placing mats or erecting thatched huts or lighting fires in a place or within limits specified in the notice.**

## NOTES.

The section corresponds to sec. 259 of U. P. Act II of 1916.

Whenever it appears necessary for the prevention of danger to life and property, the Commissioners may by public notice prohibit the stacking or collecting of inflammable materials, e.g., hay, straw, wood, etc., or placing mats or erecting thatched huts or lighting fires in places specified in the notice.

Notice under this section may be issued by the Chairman and need not be by the Commissioners at a meeting.

Breach of notice under this section is not made punishable by this or any other section and so any requisition under the section is to be enforced by the general provisions regarding enforcement of requisitions. See sections 859 to 864.

Power to make by-laws. **274. The Commissioners at a meeting may make by-laws consistent with this Act—**

(a) providing for the guidance, discipline and conduct of the members of a volunteer fire-brigade recognised by the Commissioners;

(b) prescribing the officer to whom and the place at which the outbreak of a fire shall be reported;

- (b) regulating either by rendering licences necessary, or otherwise, the letting off of fire-arms, fire-works, fire-balloons or bombs; and
- (d) generally making provision for the procedure and precautions to be adopted by the public on the occasion of a fire and for any other thing relating to fires in respect of which provision is necessary.

## NOTES.

This section gives the Commissioners at a meeting power to frame by-laws relating to the matters specified in the clauses, viz.—guidance, discipline of the members of a fire brigade, the officer to whom informations of outbreaks of fire are to be reported, letting off fire-arms, fire-works, balloons or bombs and the precautions to be taken by the public on occasions of outbreaks of fire.

By-laws are to be framed in strict conformity with sec. 353 to give legal validity to them.

Clause (a) corresponds to sec. 188 (2) of Burma Act III of 1898.

Clause (b) corresponds to sec. 298 C (a) of U. P. Act II of 1916.

Clause (c) corresponds to sec. 350 (aa) of B. M. Act.

Clause (d) corresponds to sec. 298 C(b) of U. P. Act II of 1916.

Consistent with this Act means consistent with the aim, scope, object and policy of the Act. See notes to Sec. 19.

## CHAPTER VIII.

## FOOD, DRINK AND DRUGS.

*Markets.*

Establishment of  
municipal markets.

275. The Commissioners at a meeting may provide land for the purpose of being used as a municipal market and may defray the cost of providing such land and all expenses necessary for the establishment of such market from the municipal fund, and may take a lease of any market; and may charge rent, tolls and fees for the right to expose goods for sale in such market and for the use of shops, stalls and standings therein.



## NOTES.

The section corresponds to sec. 885 of B. M. Act.

Market is defined by sec. 8 (18) and includes any place where persons periodically assemble for the sale of meat, butter, ghee, fish, fruits, vegetables or live stock.

Webster defines " market " as a meeting together at a stated time and place for the purpose of traffic by private purchase and sale and not by auction.

The definition of market is borrowed from the Calcutta Municipal Act sec. 8 (24).

" By sec. 886 of the Bengal Act no place is to be deemed to be a market unless at least 80 shops, stalls or standings are erected therein for the sale of goods. The definition has given rise to difficulties and restricts the power of control unduly. In sec. 8 (18) the definition is borrowed from the Calcutta Municipal Act 1899." Notes on clauses, para. 106.

The present definition has much widened the scope of sections 275 to 278. If a few persons assemble periodically at a place for the sale of meat, butter, ghee, etc., it will be considered to be a market within the definition even though they assemble in private lands or premises.

**Municipal Market**—according to the definition in sec. 8 (27) of the Calcutta Municipal Act meant a market belonging to or maintained by the Corporation; which also seems to be the meaning of the words in this Act.

Section 68 (xvi) empowers the Commissioners to employ the municipal fund for the establishment and maintenance of a municipal market or the taking of a market on lease and this section empowers the Commissioners at a meeting to provide lands for municipal markets and defray the costs from the municipal fund and also to take lease of existing markets. When the Commissioners have opened municipal markets or taken lease of any market they can charge rent, tolls or fees not only for the right to expose goods for sale therein but also for the use of shops, stalls and standings therein.

The object of starting municipal markets is to regulate the sale of food, drinks and drugs.

Municipal markets are usually farmed out but it does not appear that this Act gives any express sanction for such a practice.

The establishment of a municipal market gives the Commissioners no power of prohibiting rival markets in the neighbourhood. The only class of

markets with which the Commissioners have any power to interfere is that referred to in secs. 276 and 291; they can enforce taking of a licence.

The selling of one's commodities in his own shop does not bring it within the definition of a "market." What the municipality had authority to direct under sec. 66 (of the Bom. Act VI of 1873) was that no place other than the municipal market or other places licensed as markets should be used by anybody as a market. If the prohibition of the municipality was meant to affect the private rights of persons to use their shops for selling their own commodities that would amount to an excess of authority conferred by the District Municipalities Act. *Queen-Empress vrs. Magan Harjiban*, 11 Bom. 106.

The term "owner" includes a part proprietor also and such a person can apply for a licence under Chapter X of the B. M. Act. *Nripendra K. Dutt vrs. Chairman of Habiganj Municipality*, 88 I. C. 533.

**276. (1) The right of any person to use any place within the limits of a municipality, other than a municipal market, as a market or shop for the sale of animals, meat or fish intended for human food, or as a market for the sale of butter, ghee, fruit or vegetables shall be subject to by-laws (if any) made under section 291.**

Licensing of markets and shops for sale of certain articles.

**(2) Where any by-law is in force requiring a licence for the establishment or maintenance of a market or shop for the sale of any article mentioned in sub-section (1), the Commissioners shall not—**

- (a) refuse a licence for the maintenance of a market or shop lawfully established at the date of such by-law coming into force, if application be made within six months from such date, except on the ground that the place where the market or shop is established fails to comply with any conditions prescribed by, or under, this Act, nor**
- (b) cancel, suspend or refuse to renew any licence granted under such by-law for any cause, other than the failure of the licensee to comply with the conditions of licence or with any provision of, or made under, this Act.**

#### NOTES.

The section corresponds to sec. 241 of U. P. Act II of 1916 and secs. 337 to 343 of B. M. Act.

" In place of the detailed provisions contained in sections 337 to 343 of the Bengal Act, it has been considered preferable to substitute a power to make by-laws to regulate the licensing of private markets and shops for the sale of food. It is never possible to give a complete enumeration of all the sanitary precautions which may be considered necessary from time to time. The clause applies to markets or shops for the sale of animals, meat and fish and also to markets for the sale of butter, ghee, fruits and vegetables." Notes on Clauses, p. 106.

**Sub-section (1).** The Commissioners have been given wide powers to frame by-laws under sec. 291 to regulate the licensing of private markets and shops for the sale of articles of food; when granting licences they can require such sanitary precautions to be taken as they consider necessary.

The use of the words " markets or shop " for the sale of animals, meat or fish intended for human food suggests that the Commissioners can regulate the sale of these things whether they are sold in a market as defined in sec. 8 (18) or in isolated shops held in the premises of the sellers whereas in the case of butter, ghee, fruits or vegetables the Commissioners can regulate the sale in markets only but not in shops.

See in this connection *Queen-Empress vrs. Magan Harjiban*, 11 Bom 106, where on an interpretation of sec. 66 (a similar section) of the Bombay Municipal Act (Act VI of 1873) it was held that what the municipality had authority to direct under sec. 66 of the Act was that no place other than the municipal market or other places licensed as markets should be used by anybody as a market. But they had no authority to issue a notification affecting other places which might be used for selling vegetables, etc., otherwise than as a market. That if the prohibition of the municipality was meant to affect the private right of persons to use their shops for selling their own commodities, that would amount to an excess of the authority conferred by the District Municipal Act. That the shop used by the accused on hire for the sale of his own commodities was not a market within the meaning of the section and his opening the shop without a licence could not be prohibited by the municipality.

**Sub-section (2).** This sub-section applies after the Commissioners have framed by-laws under sec. 291 requiring every person who wants to establish or maintain a market or shop for the sale of food articles to take out licences. In the case of markets or shops established before the framing of the by-laws the Commissioners shall not refuse a licence except on the ground that it fails to comply with the conditions prescribed by the by-laws; but the application must be made within six months of the date of the by-laws coming into operation. Nor can the Commissioners cancel, suspend

or refuse to renew a licence once granted under such by-law, unless the licencee has failed to comply with the condition of the licence or with any other provisions of the Act.

**Maintenance.**—By "maintenance" is meant the keeping up of a market in such a manner as would make it a fit place for carrying on of a market having regard to public health and public convenience. *Ganga Narayan vs. The Municipal Board of Cawnpore*, 19 Allahabad 318.

**Shall not.** Under sec. 339 of the Bengal Municipal Act before the amendments noted below the rights of some private persons who owned markets were destroyed by the action of the Commissioners, who established new market of their own and refused licences to the former markets. It was held that there were no words which rendered it obligatory on a municipality to grant a licence under sec. 339. The word "may" in the section could not be construed as "shall." *Moran and others vs. Chairman of Motihari*, 17 Calcutta 329. In another case it was held that it was entirely within the discretion of the Municipal Commissioners under the provisions of sec. 339 of the Bengal Municipal Act to grant or refuse a licence for a market and the Courts had no jurisdiction to control such power, however arbitrarily exercised. *Queen-Empress vs. Makunda Chandra Chatterji*, 20 Calcutta 654. In consequence of the comments made in those cases and the High Court's declaration that it could not interfere with the Commissioners' discretion, however, arbitrarily exercised, sec. 339 was amended by the addition of the following passage after "the Commissioners", viz., "shall as regards markets lawfully established at the time of the extension of this part to the municipality, and in all other cases" may, grant such licence, by sec. 91 of the amending Act IV of 1894 (Bengal Act). So under the Bengal Act too after the amendment mentioned above where such markets were lawfully established before this part was extended the Commissioners had to grant a licence year by year; provided a written certificate of fitness had been previously obtained from the Chairman. The present sub-section (2) clause (a) has been adopted from the amended section 339 of the Bengal Act.

In a case under section 55 cl. (c) (a similar section) of the North-Western Provinces and Oudh Municipal Act (Act XV of 1883) it was held that the clause was not intended to empower a municipal board to make rules which would enable it to confiscate private rights without making any compensation, or to treat as nuisances acts which are not in law or with regard to public health or convenience capable of being considered nuisances. The clause was meant to give to municipal boards power to make rules for prohibiting the establishment of markets, i.e., to prevent new markets being

established and to give them power to control the maintenance of existing markets or of markets which might be established with their sanction. (In the case the plaintiff sought an injunction restraining the Municipal Board of Cawnpore from interfering with the exercise of his right to hold and maintain a market for the sale of vegetables, fruit and other articles within the grounds of a temple of which he was the manager). *Ganga Narayan vs. Municipal Board of Cawnpore*, 19 Allahabad 318.

Penalty for using un-licensed market.

**277.** Any person who being the owner or occupier of any land, wilfully or negligently permits the same to be used as a market without such licence as may be required by a by-law made under section 291, shall be liable to a fine not exceeding two hundred rupees for every such offence, and to a further fine not exceeding forty rupees for each day during which the offence is continued after conviction of such offence.

#### NOTES.

The section corresponds to sec. 344 of B. M. Act.

"Market" defined in sec. 3 (13). See also notes to sec. 275.

Where the Commissioners by a by-law framed under sec. 291 enjoined all persons to take out licences for markets, the failure whether wilful or negligent to take out such licence by the owner or occupier of the land on which such markets are held is made punishable by this section.

The prosecution would be according to sec. 375.

As to the procedure for inflicting daily fine see notes to sec. 103.

Power to close un-licensed places.

**278.** The Magistrate, on the application of the Commissioners, may order any land, in respect of which a conviction shall have been obtained under the last preceding section, to be closed as a market place, and thereupon may take order to prevent such land being so used; and every person who sells or exposes for sale animals, meat or fish, intended for human food, or butter, ghee, fruit or vegetables on any land which has been so closed, shall be liable to a fine not exceeding ten rupees.

#### NOTES.

The section corresponds to sec. 345 of B. M. Act.

"Magistrate" is defined by sec. 3 (12) and includes the District Magistrate, Sub-divisional Magistrate and any other Magistrate to whom the District Magistrate has made over any of his duties under this Act.

After there has been a conviction under sec. 277 of the owner or occupier of any land on which unlicensed markets are held the Commissioners can apply to the Magistrate to take action under this section to close it and the Magistrate on such application can declare the land to be closed as a market place and prevent people from using the land as such. After an order closing the unlicensed place is made any person who sells or exposes for sale any articles of food on it becomes liable to pay the penalty prescribed by this section.

It is necessary for a conviction under this section to prove that the Magistrate on the application of the Commissioners had ordered the land to be closed as a market place and had taken order to prevent such land being so used. *Puti Kabarini vs. Vice-Chairman, Behrampore Municipality*, 20 C. W. N. 1015.

#### SLAUGHTER-HOUSES

Places for slaughter of animals for sale.

**279. (1) The Commissioners at a meeting may, with the approval of the Magistrate, fix premises, either within or without the limits of the municipality for the slaughter of animals, or animals of any specified description, for sale, and may with the like approval grant and withdraw licences for the use of such premises.**

**(2) When such premises have been fixed by the Commissioners beyond municipal limits, the Commissioners shall have the same power to make by-laws for the inspection and proper regulation of the same as if they were within those limits.**

**(3) When such premises have been fixed, no person shall slaughter any such animal for sale at any other place within the municipality.**

**(4) Any person who slaughters for sale any such animal at any other place within the municipality, shall be liable to a fine not exceeding twenty rupees for every animal so slaughtered.**

#### NOTES.

The section corresponds to sec. 237 of U. P. Act II of 1916, and sec. 261 of B. M. Act. Sub-section (4) corresponds to sec. 273 (3) of B. M. Act.

"Slaughter houses need regulation from two different points of view; (1) for the protection of food supply and (2) for the prevention of a local nuisance. The Bengal Act deals with them from the second point of view leaving the Bengal Municipal Act VII of 1865 (Slaughter houses and Meat-markets Act) to deal with the other. This is not convenient. The provisions of sec. 275, 285 to 288, 289 and 291 (a), (b), (c) and (d) will give

the Commissioners full power properly to regulate slaughter houses both under the Act and by-laws. Sec. 275 will enable the establishment of slaughter houses outside municipal limits and the regulation of the same; only the slaughter of animals not for sale will be dealt with in the chapter relating to dangerous and offensive trades." Notes on clauses, para. 107.

Sec. 259 (1) enumerates the offensive and dangerous trades, it deals with the skinning and disembowelling of animals and slaughter houses have been omitted from the section as they are dealt with in this section.

Under this section the Commissioners at a meeting with the approval of the Magistrate may fix premises for slaughter houses and for sale of the meat and may also with the approval of the Magistrate grant or withdraw licences for the use of the premises as such. The slaughter-houses and premises for sale may be fixed either within or without the municipal limits as the Commissioners desire. When the premises have been once fixed the Commissioners shall inspect and regulate them by by-laws framed under sec. 291 (a), (b) and (c).

See in this connection *Madaran Kasab vrs. King-Emperor*, 4 Patna 311 (I.L.R.) where Mr. Justice Bucknill opined that merely on account of religious or sentimental grounds licences under sec. 259 could not be refused.

**Sub-section 3** prohibits the slaughter of any animal for sale at any place besides the slaughter-houses provided they have been provided for and licensed under sub-section (1).

**Sub-section 4.** Slaughter of animals for sale in any place besides the premises provided for and licenced under sub-sec. (1) is made punishable by this sub-section. It is only the slaughter for sale which is penalised and not slaughter for any other purpose e.g. religious purposes or home consumption.

#### MILK-SUPPLY

Powers to take measures for the improvement of the milk-supply.

**280.** The Commissioners at a meeting may for the purpose of improving the supply of milk and milk products within the municipality—

- (a) provide and set apart grazing grounds, dairies and residences for dairy men and milk-sellers within the municipality;
- (b) with the sanction of the Local Government acquire land for the purposes specified in clause (a) outside the limits of the municipality; and
- (c) charge such fees for the use of such grazing grounds, dairies and residences as may be fixed by by-law made in that behalf.

# NOTES.

The section is new and there is no corresponding section in any other Municipal Act.

"Provisions to enable a proper control of milk-supply have been long recognised to be necessary. It is proposed that power should be granted to provide grazing grounds within or without the municipality to control both under the Act and by by-laws places used for the keeping of cows or buffaloes or for a dairy or for the sale of milk or milk products and also the import of milk and milk products within the municipality. Section 289 empowers the Local Government to frame rules on the subject." Notes on clauses para. 108.

By this section the Commissioners at a meeting are empowered to provide and set apart grazing grounds and dairies and residences for dairy men and milk sellers within the municipality and acquire land outside the municipality for the above purpose with the sanction of the Local Government and charge such fees for the use of such grazing grounds, etc., as may be fixed by by-laws made in that behalf. In order to acquire land outside the municipal area sanction of the Local Government has to be obtained but to acquire land within the municipal limit no such sanction is necessary as they can be acquired by private agreement under sec. 63 or by land acquisition proceeding.

Power to make rules for the improvement of the milk-supply.

**281. (1) The Local Government may make rules consistent with this Act to—**

- (a) prohibit the use of any place within a municipality for the purpose of the trade or business of a dairyman or as a dairy or for the sale of milk or milk products except under licence from the Commissioners;**
- (b) prescribe and regulate the construction, dimensions, ventilation, lighting, cleansing, drainage and water-supply of dairies and cattle-sheds in the occupation of persons following the trade of dairymen or sellers of milk or milk products, and providing for the inspection of milch cattle, and for securing the cleanliness of milk stores, milk shops and vessels used by such sellers or dairymen for milk and milk products;**
- (c) prohibit the import into a municipality of milk and milk products except under a licence from the Commissioners; and**
- (d) require notice to be given to the Commissioners whenever any milch cow or buffalo is affected with any contagious disease and**



prescribe precautions to be taken to protect milk against infection and contamination; and

(e) make provision generally to prevent the adulteration of milk within the municipality.

(2) Rules made under this section shall not take effect in any municipality unless the Commissioners at a meeting have by resolution adopted them.

(3) Whoever contravenes any rule made under this section, or any condition of any licence granted under any such rule, shall be liable for every such offence to a fine not exceeding fifty rupees.

### NOTES

The section is new.

The other sections in which rule-making power is given to the Local Government are sections 7, 11, 19, 81, 163, 325, 341.

Rules to improve the milk-supply within a municipality can be framed by the Local Government but the rules will have to be adopted by the Commissioners at a meeting before they take effect in the area.

The rules must be consistent with this Act, and relate to (1) the use of any place for the dairymen or as a dairy for the sale of milk or milk products and (2) construction, dimensions, sanitation, etc., of dairies and cattle sheds and their inspection and securing the cleanliness of milk stores and milk products and (3) the import of milk and milk products and (4) the giving of information to the Commissioners when any milch cow or buffalo is affected with contagious disease and precautions to be taken against the infection and contamination of the milk-supply and (5) provisions to prevent adulteration of milk.

Dairies, milch cows, buffaloes kept for trade or business only come within the purview of the rules framed (if any).

**Sub-section 3.** Contravention of any of the rules made under this section is made punishable by this sub-section.

### Drugs.

Registry of shops, for sale of drugs used in Western medical science.

**282. (1)** No shop or place shall be kept for the retail sale of drugs recognised by the British Pharmacopoeia, not being also articles of ordinary domestic consumption, unless the same has been registered in the office of the Commissioners. The Commissioners shall, upon registration, grant the

keeper of such shop or place a licence which he shall be bound to display in some conspicuous part of premises.

(2) Any keeper of such shop or place as is mentioned in sub-section (1) who fails to register the same within two months from the date of the establishment thereof, and any person who uses such shop or place without the same being licensed, shall be liable to a fine not exceeding one hundred rupees, and to a further fine not exceeding twenty rupees for each day during which the offence is continued after he has been convicted of such offence.

### NOTES

Sub-section (1) corresponds to sec. 252 and sub-sec. (2) corresponds to sec. 275 of B. M. Act.

Registration of retail druggists' shop for the sale of European drugs is made compulsory by this section and on registration a licence shall be granted by the Commissioners which must be hung up in a conspicuous place of the shop.

Failure to register a druggists' shop within 2 months of its establishment and using of the shop without registration is penalised by sub-sec. (2).

No fee would be ordinarily chargeable for such licence but if the Commissioners fix a fee for such licences by a by-law under sec. 291 (j) then such fee would have to be paid but no annual renewal of it would be necessary.

For the procedure for inflicting daily fine see notes to sec. 108.

Compounder's certificate.

**283. (1) No person shall compound, mix, prepare, dispense or sell any drug in any shop or place registered under the preceding section, unless he hold a certificate prescribed under any by-law that he is a fit person to be entrusted with such duties.**

**(2) Any person who, not being the holder of such certificate as is mentioned in sub-section (1), compounds, mixes, prepares or sells any drugs in any registered shop or place, shall be liable to a fine not exceeding fifty rupees ;**

**and any owner, occupier or keeper of any such shop or place, who employs any such uncertified person to perform any one or more of such duties, shall be liable to a fine not exceeding two hundred rupees, and shall be further liable, at the discretion of the Magistrate to forfeit his licence :**

**Provided that this section shall not come into operation until after the expiration of a period of six months from the publication of a notification to that effect by the Local Government.**

## NOTES

Sub-section (1) corresponds to sec. 252 and sub-sec. (2) corresponds to sec. 276 of B. M. Act.

In a registered druggists' shop no compounder shall be employed who does not hold a certificate that he is a fit person to be entrusted with such duties. The qualifications for compounder's certificate would be prescribed by a by-law framed under sec. 291 (f), if no such by-laws have been framed then the rules for the grant of certificate to compounders, passed by the Bengal Government will be observed. Bengal Government Notification No. 1410 Med. of 7th July, 1918. See Appendix.

**Sub-section 2.** Infringement of the provisions of sub-sec. (1) whether by the dispenser or by his employer is punishable by this sub-section.

**Proviso.** To make this section applicable a notification by the Local Government is necessary and it will be applicable after the expiration of 6 months from the date of the publication of the notification.

The prosecution will be according to sec. 375.

**284. Nothing contained in section 282 or section 283 shall be construed to apply to the sale of drugs used by practitioners of indigenous medicines, whether recognised by the British Pharmacopœia or not, when such drugs are not sold in a shop or place where medicines recognised by such Pharmacopœia are dispensed upon prescription.**

Savings as to sale of drugs used by practitioner of indigenous medicines

## NOTES

The section corresponds to section 252 of B. M. Act.

Section 282 applies to shops for the sale of European drugs and sec. 288 relates to the compounders to be employed in such shops. This section lays down that the provisions as to registration laid down in sec. 282 or the employment of proper men as compounders under sec. 283 will not apply to shops of native practitioners who mainly use indigenous medicines.

## GENERAL PROVISIONS.

Power of Commissioners to enter and inspect markets, shops, etc.

**285. The Commissioners or any person authorized by them in that behalf, may, at all reasonable times, enter into and inspect any market, building, shop, stall or place used for the sale or storage of articles intended for human consumption, or as a slaughter-house or for the sale of drugs, and inspect and examine any article of food or drink or any animal or drug which may be therein.**

## NOTES

The section corresponds to sec. 251B and sec. 253 of the B. M. Act.

"In this and the following three clauses the provisions of sections 250 to 253 of the Bengal Act have been somewhat re-arranged." Notes on Clauses p. 109.

In order to exercise their power of control the Commissioners themselves or any other person authorised by them for the purpose may enter into any market, building, shop, stall or place used for the storage of articles of food, or as a slaughter-house or drug-shop and examine any articles of food or drink or drug or any animal therein.

Seizure of unwholesome articles and removal of deleterious and spent drugs

**286. (1) If, in the course of the inspection of a place under the last preceding section, an article of food or an animal appears to be intended for human consumption and to be unfit therefor, the Commissioners may seize and remove the same, and may produce it before a Magistrate or, where the owner or person in whose possession the same is found consents, may cause it to be destroyed, or to be so disposed of as to prevent its being exposed for sale or used for such consumption.**

**(2) If it is reasonably suspected that a drug has been improperly adulterated, or by reason of age or the effect of climate has become inert or unwholesome, or has otherwise become deteriorated in such a manner as to lessen its efficacy, or to change its operation, or to render it noxious, the Commissioners may remove the same, giving a receipt therefor, and may produce it before a Magistrate.**

## NOTES

The section corresponds to secs. 251B and 253 of B. M. Act and sec. 244 of U. P. Act II of 1916.

If in the course of an inspection under sec. 285 the inspecting officer finds an article of food or animal which appears to him to be intended for human consumption and unfit for such purpose he may seize and remove it and produce it before a Magistrate to be destroyed or otherwise disposed of thus preventing it from being sold or in any way being used for human consumption; or if the person in whose possession it is found consents to its being destroyed or otherwise disposed of, the inspecting officer can himself destroy or dispose of it as indicated above.

**Sub-section (2).** If there is reason to suspect that a drug has been improperly adulterated or has become inert or unwholesome by reason of

age or climate or has otherwise become medically deteriorated the inspecting officer can seize it and produce it before a Magistrate who shall deal with it under sec. 288.

“ Magistrate ” is defined by sec. 3 (12).

Sale of unwhole-  
some food or drink

**287. Any Magistrate, on the application of the Commissioners or any of their officers setting forth that there is just cause to believe that any article which has been rendered or has become noxious or unfit for human consumption is in the possession of any person for the purpose of being sold or offered or exposed for sale within the limits of a municipality, for such consumption, may grant a warrant to enter upon the premises of such person, and to search for and seize such article ;**

**and, if it appears to the said Magistrate that the same is noxious or unfit for such consumption, he shall order it to be forfeited and disposed of in such a way as to him shall seem proper.**

#### NOTES

The section corresponds to sec. 250 of B. M. Act.

A magistrate may grant a warrant when the Commissioners or any of their officers make an application to him, setting forth that there is reason to believe that any article which has become noxious and unfit for human consumption is in a particular place and in the possession of a person and is meant for sale. When the articles are brought to him he shall, if he is satisfied that the things are noxious or unfit for human consumption, forfeit them and order them to be disposed of in a proper way. The Bengal Act sec. 250 used the words “ use as food or drink for man ” instead of the words “ human consumption ” in the present section after the words “ noxious or unfit for.”

“ Magistrate is defined by sec. 3 (12).

Whoever adulterates any articles of food or drink so as to make such article noxious as food or drink intending to sell such article as food or drink or knowing it to be likely that the same will be sold as food or drink is punishable under sec. 272 I.P.C. and under sec. 273 I.P.C., whoever sells or exposes for sale as food or drink any article which has been rendered or has become noxious or is in a state unfit for food or drink, knowing or having reason to believe that the same is noxious as food or drink is punishable. These sections are not cognisable except on complaints and give no power to seize those articles. The present section enables the Commissioners to search for these articles and apply to a magistrate for a warrant to search and seize

such articles and have them destroyed. The Commissioners have further power under sec. 285 to enter, inspect and examine any article of food or drink.

"Just cause to believe" is equivalent to "reason to believe." See sec. 26 of the Indian Penal Code and *Chandi Prasad vs. Abdul Rahaman*, 22 Calcutta 131.

The words "for the purpose of (1) being sold or offered or exposed for sale, (2) for such consumption" are essential and it must be shown that it is the purpose for which a person has possession of the article otherwise these provisions will not apply.

In a case under a similar section of the Calcutta Municipal Act certain damaged rice which had been bought by a person who intended to sell it as food for kids was seized and the Magistrate ordered it to be destroyed under sec. 505 of the Calcutta Municipal Act and the judgment of the Magistrate contained no finding that the rice was bought for the purpose of sale or that it was intended for human food but contained a finding that there was always a risk that it might be sold for human consumption to poorer classes or might be used in a flour mill worked by unscrupulous persons; it was held that the fact that this danger existed did not justify the order, and that until some attempt was made to sell the rice for consumption by the poorer classes, the Corporation was not justified in destroying the property of a man who was disposing of it in a way which was perfectly legitimate. In order to justify an order under sec. 505 of the Calcutta Municipal Act the Magistrate must be satisfied and there must be a finding in his judgment that the article directed to be destroyed comes within sec. 502 of the Act and it is either exposed or hawked about for sale, or deposited in, or brought to, any place for the purpose of sale or preparation for sale, and is intended for human food. *Chandra Kumar Biswas vs. Calcutta Corporation*, 30 Calcutta 421=7 C. W. N. 27.

When a quantity of ghee was made over to a person for the purpose of finding out whether the ghee was pure or adulterated and while in his custody it was seized under sec. 250 of the B. M. Act, held that the action of the Magistrate was *ultra vires* inasmuch as the ghee had not been offered for sale as fit for human consumption and a Magistrate has no jurisdiction to seize it under the section. *Ram Chandra Marhattia vs. Ram Pratap*, 43 I. C. 796.

Power of Magistrate to order destruction of noxious article, animal or drug and to punish offender.

**288. (1) Where any animal, article or drug is brought before a Magistrate under section 286 or 287, such Magistrate, if he is satisfied on the evidence that the article or animal was intended for human consump-**

tion and is unfit therefor or that the drug is adulterated in such manner as to lessen its efficacy or to change its operation, or to render it noxious, may order the article or animal to be destroyed or to be so disposed of as to prevent its being exposed for sale or used for human consumption, or the drug to be dealt with as he may think fit, and may direct that the owner or person in possession of such article, animal or drug, not being merely a carrier or bailee thereof, shall be punished with fine which may extend to one hundred rupees.

(2) If it appears to the said Magistrate that a drug removed under section 286 is not adulterated or has not become inert, unwholesome or deteriorated as aforesaid, the person from whose shop or place it has been taken shall be entitled to have it restored to him, and it shall be in the discretion of the said Magistrate to award him such compensation as he may think proper, not exceeding the actual loss which has been sustained.

(3) If the drug removed as aforesaid is not brought before a Magistrate, it shall be restored to the person from whose shop or place it was taken, and such person shall be entitled to compensation for any actual loss which he may have sustained by the removal of the said drug.

#### NOTES.

The section corresponds to sec. 251C of B. M. Act and sec. 183 of C. P. Act XVI of 1908.

**Sub-section 1.** When any article, animal or drug is brought under sec. 286 or 287 before any Magistrate and he is satisfied that the article or animal (1) was intended for human consumption and (2) is unfit for such purpose or that the drug has been improperly adulterated and has become noxious, he may order the article or animal to be destroyed or otherwise disposed of and in the case of drugs he may deal with them as he thinks fit and also punish the owner or person in possession. It is only when a drug is adulterated in such manner as to lessen its efficacy or to change its operation or to render it noxious that the Magistrate can deal with it as he thinks fit and also punish the owner or possessor. The owner or person in possession is liable to punishment and not the carrier or bailee.

**Sub-section 2.** When a Magistrate finds that a drug brought to him under sec. 286 is not adulterated nor has become inert or unwholesome by reason of age or climate or deteriorated he should return the drugs to the

person from whom it was taken and may grant compensation up to the actual loss sustained by the man.

**Sub-section 3.** If the drug removed under sec. 286 is not brought to the Magistrate it shall be restored to the person from whose possession it was taken. Such person shall be entitled to compensation for the actual loss sustained by the removal of the drug. In cases coming under sub-section (2) the magistrate can award compensation but in cases coming under this sub-section the Commissioners are to award the compensation failing which a civil suit shall have to be brought for it.

Drainage of markets, and slaughter-houses etc.

**289. (1)** Every owner, occupier or farmer of a market or of any place for the sale of meat, ghee, butter, fish or vegetables, or of any slaughter-house, within the limits of a municipality, shall cause such drains to be made therein as shall be considered sufficient by the Commissioners, and, if required to do so by the Commissioners, shall cause all the floors and drains to be paved with stone or burnt brick, and shall also cause a supply of water to be provided, sufficient for keeping such market, place or slaughter-house in a clean and wholesome state.

(2) Any such owner, occupier or farmer who, after notice in writing given to him by the Commissioners that such market, place or slaughter-house is defective in any of the particulars specified in sub-section (1), and requiring him to remedy the defects specified within such time as may be specified in the notice, makes default therein, shall be liable to fine not exceeding one hundred rupees, and to a further fine not exceeding twenty rupees for every day during which such default is continued after the expiration of the time specified in such notice; provided that the time specified in the notice shall not be less than thirty days.

#### NOTES.

Sub-section (1) corresponds to sec. 249 and sub-section (2) corresponds to sec. 268 of B. M. Act.

Owners, occupiers or farmers of markets, etc., are required to construct proper and efficient drainage for the same and to have the floors and drains made with stone or bricks if so required by the Commissioners and shall also keep a sufficient water-supply to keep them in a clean and wholesome condition.

The power of inspection of the places is given by sec. 285 and any defect in the arrangements can be at once required to be remedied.



**Sub-section 2.** The Commissioners may give notice pointing out the defects and requiring them to be remedied within a time to be specified in the notice and if default is made the delinquent is punishable under this section. The time granted for compliance with the notice must be at least 30 days.

For the procedure for inflicting the daily fine see notes to sec. 108.

Power to open food depôts, etc. in cases of emergency.

**290. Whenever an emergency arises which in the opinion of the Commissioners makes it advisable to open depôts for the sale of foodstuffs, fuel, cloth and other similar necessities of life, they may, with the previous sanction of the Local Government, and subject to such conditions and limitations as the Local Government may determine, open such depôts for such purpose.**

#### NOTES.

This section was not in the original Municipal Bill. It was introduced on account of the recommendations of the Select Committee which ran thus, "We have inserted a clause corresponding to cl. 398 of the Calcutta Municipal Bill empowering the municipality to undertake the sale of necessities of life in times of emergency with the approval of Government. Several municipalities have during recent years with a view to prevent profiteering undertaken the sale of rice, salt, cloth, etc., and it is desirable to legalise the expenditure of municipal fund on this object." Report of the Select Committee, para. 82.

The Commissioners in times of emergency and to prevent profiteering can open depôts for the sale of foodstuffs, fuel, cloth and other necessities of life with the previous sanction of the Local Government and subject to such conditions and limitations as it may impose.

Power to make by-laws to regulate the sale of food and drugs.

**291. The Commissioners at a meeting may make by-laws consistent with this Act—**

- (a) prohibiting, subject to the provisions of section 276, the use of any place as a slaughter-house, or as a market or shop for the sale of animals, meat or fish intended for human food, or as a market for the sale of butter, ghi, fruit or vegetables, without a licence granted by the Commissioners or otherwise than in accordance with the conditions of a licence so granted;
- (b) prescribing the conditions subject to which, and the circumstances in which and the areas or localities in respect of which, licences for such use may be granted, refused, suspended or withdrawn;

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- (a) providing for the inspection of, and regulation of the conduct of business in a place used as aforesaid, so as to secure cleanliness therein or to minimize any injurious, offensive or dangerous effect arising or likely to arise therefrom;
- (d) in a municipality where a reasonable number of slaughter-houses has been provided or licensed by the Commissioners, controlling and regulating the admission within municipal limits, for purposes of sale, of the flesh (other than cured or preserved meat) of any cattle, sheep, goats or swine slaughtered at a slaughter-house or place not maintained or licensed under this Act;
- (e) prescribing the fees to be paid for the use of municipal grazing grounds, dairies and residences;
- (f) prescribing the qualifications and certificates to be possessed by compounders and dispensers of drugs for the purposes of section 283;
- (g) regulating the sale or the manufacture, preparation, storage or exposure for sale of any specified article of food;
- (h) regulating the hours and manner of transport within the municipality of any specified article of food;
- (i) prescribing the standard weights and measures to be used within the municipality, and providing for the inspection of the same; and
- (j) fixing the fees for the grant of any licence under this Chapter.

## NOTES.

The section corresponds to sec. 298F of U. P. Act II of 1916.

Clause (g) corresponds to sec. 102 of C. P. Act XVI of 1903; cl. (h) corresponds to sec. 197 (c) of Punjab Act III of 1911; cl. (i) corresponds to sec. 188 (1) (c) (iii) of Punjab Act III of 1911.

"It is proposed to give the Commissioners power to prescribe standard weights and measures and provide for their inspection." Notes on clauses para. 110.

**Consistent with this Act:**—Consistent with the aim, scope and the object of the Act as shown by its provisions. See notes to sec. 19, 42. The sections which give by-law making power to Commissioners are sections 42, 81, 195, 264, 274 and 291.

By-laws are to be framed in strict accordance with sec. 354 to give legal validity to them.

The section gives wide by-law making powers to the Commissioners to regulate markets, slaughter-houses, sales of meats, to prescribe fees for the use of municipal grazing grounds, dairies and residences; to prescribe the qualifications and certificates to be possessed by compounders and dispensers of drugs. Further to regulate the sale, manufacture, preparation, storage and exposure for sale of specified articles of food; and the hours and manner of transport of certain specified articles of food and prescribe standard weights and measures to be used within the municipality.

## CHAPTER IX.

### WATER-SUPPLY, LIGHTING, DRAINAGE AND SEWERAGE SYSTEMS.

"The provisions of the Bengal Act which are concerned with the procedure to be followed in connection with municipal water-supply and drainage schemes are sections 87B to 87M in Part II of the Act which deals with Municipal authorities and are out of place there. The procedure laid down is cumbrous and complicated and serves to cause delay. For the provisions it is proposed in the Bill to substitute a power of the Local Government to make rules to regulate preparation of voluntary schemes, including lighting by electricity or gas and sewerage schemes, and to require that no scheme shall be sanctioned by the Local Government until it has been published and objections and suggestions have been considered."

"The procedure laid down in the Bengal Act with regard to compulsory schemes is also unsatisfactory. The Local Government under sec. 87K calls on a municipality to show cause why it should not provide a water-supply. After cause is shewn and considered the municipality is called on to submit a scheme, but if two-thirds of the Commissioners vote against the scheme it must be abandoned. If the Commissioners fail to prepare a scheme the District Magistrate can under section 64 be directed to prepare one. The first step should be to get a scheme prepared by some competent officer then ask the Commissioners to carry it out, and then if accepted by them, publish it. This latter procedure is laid down in the Bill, the Commissioners being allowed to reject a scheme proposed if there is a two-thirds majority against it." Notes on Clauses, p. 111.

## INTRODUCTION OF SCHEMES.

Application for sanction to a scheme for water supply, lighting, drainage or sewerage.

**292.** Subject to the provisions of sections 293 and 294 and of such rules as may be made under section 325, the Local Government may, on application of the Commissioners of any municipality at a meeting, or of such Commissioners acting conjointly with any other local authority, sanction a scheme for water-supply, or for the introduction of a system of lighting by electricity, gas or otherwise, or of drainage or sewerage.

## NOTES.

The section corresponds to section 37B of B. M. Act.

When the Commissioners at a meeting desire to undertake a project for water-supply or introduction of a system of lighting by electricity, gas or otherwise, or a comprehensive scheme of surface drainage or sewerage or the improvement or extension of existing works of these descriptions they shall draw up a sketch demonstrating its scope, practicability and approximate cost and submit it to the Local Government for sanction, who after publication of the scheme in the Gazette and locally in the Municipal office and in the Municipal area to be affected by it and after the expiry of two months from the date of the publication and after considering any objections or suggestions that may be submitted, may sanction the scheme or modify or reject it.

The rules for the submission of projects to the Sanitary Board are given in the Appendix.

These and the following sections were introduced with a hope that in the larger municipalities which had not been provided with a wholesome water-supply or with a good system of drainage, recourse would be had to them. This section leaves the municipality to take the initiative.

**Acting conjointly with any other authority.** The Commissioners of any municipality may and when so required by the Local Government shall, join with any other local authority in constituting out of their respective bodies a Joint-Committee for any purpose in which they are jointly interested and in delegating to any such Joint-Committee any power which might be exercised by the Commissioners or any of the local authorities concerned. See sec. 51.

When big schemes in which more than one municipality and a District Board or any other local authority are concerned and which either of the institutions cannot carry out singly; they can combine together and form a

Joint-Committee and frame rules for their proceedings and as to the conduct of correspondence relating to the purpose for which they have been constituted.

Under the Bengal Act, schemes for supply of water for domestic purposes and introduction of systems of drainage could be framed by the Commissioners but the present section gives them far wider scope, viz., water-supply for all purposes and lighting systems either by electricity or gas, and sewerage.

Publication of **293. Before any scheme or joint-scheme for any scheme.** of the purposes mentioned in section 292 is sanctioned by the Local Government, there shall be published in the Gazette and locally in accordance with the provisions of section 356, the following particulars—

- (a) a general description of the scheme;
- (b) an estimate of the cost of carrying it out;
- (c) an estimate of the cost of maintaining it;
- (d) the sources from which the cost will be met;
- (e) the amount of the loan, if any, proposed to be taken by the Commissioners or local authority, the annual instalments by which it will be repayable, the number of years required to repay it;

and also, when the scheme is for the provision or improvement of water-supply or of a system of lighting—

- (f) the total annual charge to be incurred by reason of the water-supply or system of lighting and to be met by a water-tax or lighting tax;
- (g) the percentage of such tax on the annual value of holdings; and
- (h) the average incidence of such tax per head of the population.

#### NOTES.

The clauses (a) to (e) correspond to sec. 87F (1) and clauses (f) to (h) correspond to section 87 (F) (2) of B. M. Act.

Under the present section the publication in the Gazette and locally has to be done before the sanction of the Local Government is obtained but under the corresponding section of the Bengal Act, the publication had to be done after the schemes were sanctioned by the Local Government.

The publication before the scheme is sanctioned is intended to inform the tax-payers how they will be affected by the introduction of the scheme, what tax they will have to pay and to enable them to submit their objections or suggestions which have to be considered by the Local Government before granting sanction.

This section and the following sections will apply when the Commissioners act on their own initiative; secs. 295 and 296 provide for cases in which the Local Government prepares schemes and asks the Commissioners to shew cause why they should not be required to carry them out.

The municipality may raise a loan under the Local Authorities Loans Act (Act IX of 1914) in order to carry out the schemes. See secs. 6 and 7 of the Act (Appendix).

Joint-scheme :—a scheme submitted by two local bodies jointly.

**294.** After the expiry of two months from the date of such publication, and after considering any objections or suggestions that may be submitted, the Local Government may—

- (a) sanction the scheme, or
- (b) add to, alter, or modify the scheme, and sanction the scheme so added to, altered or modified, or
- (c) reject the scheme;

Provided that, if any addition to, or alteration or modification of, the scheme has the effect of increasing the share of the cost to be defrayed from the municipal fund, or, in the case of a joint-scheme, from the fund of any local authority concerned, or from a loan, the particulars enumerated in the last preceding section shall again be published as therein provided, and the scheme shall not be sanctioned until after the expiry of two months from the date of such publication and until any objections or suggestions that may be submitted have been considered.

#### NOTES.

The section corresponds to sec. 37G of B. M. Act.

With regard to the scheme submitted under sec. 292 to the Local Government, it may sanction it, or add to, alter or modify it, or reject it. If the addition, alteration or modification proposed by the Local Government has the effect of increasing the share of the cost to be defrayed from the municipal fund a second notification of the modified scheme will have to be made in the Gazette and locally under sec. 356, and after considering

any further objections by the tax-payers the scheme shall be sanctioned or rejected.

Power of government to cause scheme to be prepared.

**295. The Local Government may, if it considers it necessary to do so, cause a scheme for any of the purposes mentioned in section 292 to be prepared for any municipality, or for a municipality and an area or areas under the control of one or more local authorities, by such officer as it may depute for the purpose.**

### NOTES.

The section is new.

Under sec. 87K of the Bengal Act when it appeared to the Local Government that the Commissioners of any municipality . . . should be required to provide a supply of water for domestic purposes, or to introduce a system of drainage it could call upon them to shew cause why they should not be so required and if the Local Government considered their objections insufficient, it could fix a time within which the Commissioners should submit a scheme, plans, specifications and estimates as were required by sec. 37B of the B. M. Act, and in case of default the Local Government could cause it to be made by the District Magistrate under sec. 64 of the Act.

This was a method of compulsion and sec. 37K of the B. M. Act has been repealed by the present section; the reason for so doing is given thus. "The procedure laid down in the Bengal Act with regard to compulsory schemes is also unsatisfactory. The Local Government under sec. 37K calls on a municipality to show cause why it should not provide water-supply. After cause is shown and considered the municipality is called on to submit a scheme, but if two-thirds of the Commissioners vote against the scheme it must be abandoned. If the Commissioners fail to prepare a scheme the District Magistrate can under sec. 64 be directed to prepare one. The first step should be to get a scheme prepared by some competent officer then ask the Commissioners to carry it out, and then if accepted by them, publish it. This latter procedure is laid down in the Bill, the Commissioners being allowed to reject a scheme proposed if there is a two-thirds majority against it." Notes on Clauses, p. 112.

Under the Bengal Act the only schemes which the Local Government could force the Commissioners to adopt were schemes for the supply of water for domestic purposes or for introduction of system of drainage, but under this section any of the schemes mentioned in sec. 292 can be introduced.

Power to require  
Commissioners to adopt  
scheme.

**296. (1)** When a scheme has been prepared for a municipality under the last preceding section, the Local Government may call upon the Commissioners of such municipality to show cause at a meeting why they should not be required to carry out the scheme.

**(2)** The Local Government shall consider any objections and suggestions which may be submitted by the Commissioners and may, subject to the provisions of section 293 and 294, sanction the scheme:

Provided that, if at any time before the scheme is sanctioned, a resolution against the introduction of the scheme is passed, at a meeting of the Commissioners specially convened for the purpose, in favour of which a majority of not less than two-thirds of the Commissioners have voted, no further action shall be taken by the Local Government under this section.

#### NOTES.

The section corresponds to sec. 37K of B. M. Act but mark the difference between the present section and the old section; as explained in the notes to sec. 295.

The first step for the Local Government, when it desires to take action under this section is the preparation of a scheme for any of the purposes mentioned in sec. 292 by a competent officer deputed by it and then ask the Commissioners to carry it out.

Sub-section (2) Proviso. The Commissioners can have a scheme proposed by the Local Government rejected and abandoned if there is a resolution of the Commissioners at a meeting, against the introduction of the scheme, supported by a majority of two-thirds of the entire number of Commissioners of the municipality. Ample opportunity is thus given for any preponderating local opinion, that may be adverse to the scheme, to express itself.

**297.** The Local Government may order the works specified in any scheme or joint-scheme sanctioned under section 294 or section 296 to be executed by an officer to be appointed by it, and shall fix the remuneration of such officer (provided that the cost of the scheme as sanctioned be not exceeded) and may specify a period within which the work shall be completed, and may extend such period from time to time as may be necessary.

Power to appoint an  
officer to execute the  
work.



## NOTES.

The section corresponds to section 37 I of B. M. Act.

It is a special provision for special cases. If the Municipality has got competent officers, then the Local Government will not appoint, otherwise the works will be executed by appointed qualified officers on proper remuneration but the sanctioned cost should not be exceeded.

Advance from public funds of cost of scheme prepared by a deputed officer.

**298. When a scheme or joint-scheme is prepared by an officer deputed by the Local Government for the purpose, the expenses incurred by him in the preparation of the scheme and the cost of carrying out the scheme, if sanctioned, may be advanced from the public funds on the security of the fund or funds of the municipality or local authority concerned, and such advance shall be recoverable under the Local Authorities Loans Act, 1914, and all the provisions of that Act and the rules made thereunder referring to the recovery of loans shall be applicable to such advance.**

## NOTES.

The section corresponds to section 37 J of B. M. Act.

For the Local Authorities Loans Act and the rules thereunder. See Appendix.

Carrying out of scheme after sanction.

**299. When a scheme has been sanctioned by the Local Government under section 294 or section 296, the Commissioners of the municipality, or the Commissioners conjointly with another local authority, or a joint-committee constituted under section 51, shall, if the tax or other monies to be collected, received or recovered for or in respect of the supply of water or the lighting, drainage or sewerage system be sufficient for the purpose, and subject to the provisions of section 297, proceed to carry it out, or cause it to be carried out.**

## NOTES.

The section corresponds to section 37H of B. M. Act.

For the rules for the execution of schemes see Appendix. Sanitary Projects Rules.

**GENERAL PROVISION** relating to the LAYING and CONNECTING of PIPES, DRAINS and the like.

**Power of Commissioners to lay, or carry wires, pipes, drains, etc. through private land.**

**300. The Commissioners may carry any pipe, drain, cable, wire or channel of any kind for the purpose of providing or of carrying out and establishing or maintaining a system of water-supply, lighting, drainage or sewerage, through, across, under or over any road, or place laid out as or intended for a road, and, after, giving reasonable notice in writing to the owner or occupier, into, through, across, under, over or up the side of any land or building whatsoever situate within the limits of the municipality, and, for the purpose of introduction, distribution or outfall of water or for the removal or outfall of sewage, without such limits, and may at all times do all acts and things which may be necessary or expedient for repairing or maintaining any such pipe, drain, cable, wire or channel, as the case may be, in an effective state for the purpose for which the same may be used or intended to be used :**

**Provided that no nuisance more than is necessarily caused by the proper execution of the work is created by any such operation ; and**

**Provided, further, that reasonable compensation shall be paid to the owner or occupier for any damage at the time sustained by him and directly occasioned by the carrying out of any such operations.**

#### NOTES.

The section corresponds to section 182 of Punjab Act III of 1911.

" This and the following clauses are based on the Punjab Municipal Act and provide for the facilities which the Commissioners must have when carrying out a scheme. Provision is made to guard against unnecessary damage and for payment of compensation when damage is done." Notes on Clauses, p. 118.

The Commissioners and their officers can carry pipes, cables, wires channels or drains through, across, under or over any roads, roadside lands or buildings and also to repair them when necessary.

**Damage.** Damages which are directly occasioned by the carrying out of the work must be paid to the persons who suffer the damage.

" Direct damage " is defined in the explanation to sec. 174 (2) and " any damage which he may sustain " in sec. 178 (5). See notes to the sections.

Wires, pipes, drains,  
etc., laid or carried  
above surface of ground.

**301.** In the event of any pipe, drain, cable, wire or channel being laid or carried above the surface of any land or through, over or up the side of any building, such pipe, drain, cable, wire or channel, as the case may be, shall be so laid or carried as to interfere as little as possible with the rights of the owner or occupier to the due enjoyment of such land or building, and reasonable compensation shall be paid in respect of substantial interference with any such right to such enjoyment.

#### NOTES.

The section corresponds to sec. 183 of Punjab Municipal Act III of 1911.

It would be the duty of Commissioners and their officers in laying pipe, drain, cable, wire or channel or carrying them over the surface of any land or building to place them in such a way as to cause the least possible inconvenience to the user of the properties by the owners and it is only in cases of substantial interference with the rights of user that reasonable compensation shall be paid.

Previous notice to  
be given.

**302.** Except in cases to which section 307 relates, the Commissioners shall cause not less than fourteen days' notice in writing to be given to the owner or any occupier before commencing any operations under section 300 .

#### NOTES.

The section corresponds to sec. 184 of Punjab Municipal Act III of 1911.

Power to permit  
connections to houses  
and lands.

**303.** Subject to the prescribed conditions and restrictions and to such terms as the Commissioners at a meeting may from time to time determine, the Commissioners may—

- (a) on the application of the owner or occupier of any house or land paying water-tax or lighting-tax, as the case may be, make or cause or permit to be made, communication or connections from any main distribution pipes, cable or wire belonging to the Commissioners for the purpose of leading water, electricity or gas to such house or land,
- (b) on the application of the owner or occupier of any house or land, make, or cause or permit to be made, any connection

sec. 304

or communication to such house or land from any drains, or channel constructed or maintained by or vested in the Commissioners, and

- (c) require the amount necessary for the execution of such work through their own agency to be paid or deposited before such work is executed by them.

## NOTES.

Clauses (a) and (b) correspond to sec. 290 and cl. (c) corresponds to sec. 302 of B. M. Act.

**Prescribed**—defined by sec. 3 (22) means prescribed by rules made by the Local Government under this Act.

The conditions and restrictions for the connections to the houses would be prescribed by rules made by the Local Government and costs, etc., on which the connections are to be made are to be fixed by the Commissioners.

The Local Government can make and impose rules and conditions under which the Municipal Commissioners may allow house connections with service water pipes. The municipality is entitled to compel the occupier or owner of a house to pay for cost of water meter to measure the amount of water consumed in the house or to cut off water supply for non-payment of the same. *Nagendralal Das vrs. Chairman, Chittagong Municipality*. 47 Calcutta 426=27, C. W. N. 240.

**304. In any municipality to which the provisions of this section may at any time by notification be extended by the Local Government, the Commissioners may, at any time, establish any connection or communication from any water-main or drain to any house or land, or may by notice require the owner or occupier of any such house or land to establish any such connection or communication, in such manner and within such time as the Commissioners, by notice in that behalf, may prescribe, at the cost of such owner or occupier.**

Power to make or require connections in certain cases.

## NOTES.

The section corresponds to sec. 180 of Punjab Act III of 1911.

The provisions of this section will apply only in the municipalities to which they are extended by a notification by the Local Government.

power to establish  
meter and the like.

**305. (1) The Commissioners may establish meters or other appliances for the purpose of testing the quantity of water or the quantity or quality of any gas or electricity supplied to the house or land of any person, or to, or for the use of, any person or business.**

**(2) The cost of providing or attaching a meter or other appliance under sub-section (1) shall be paid out of the municipal fund.**

#### NOTES.

The section corresponds to sec. 187 of Punjab Municipal Act III of 1911.

The section makes the attachment of meters for the purpose of recording the quantity of water or the quantity or quality of gas or electricity supplied to the house or land, discretionary with the Commissioners; but it is in the interest of the Commissioners that meters should be installed to make the consumers pay for what they use.

The sub-section (1) as it stood in the Original Bill did not contain the words "the quantity of water or" and there were two other clauses, viz., clause 328 which required the Commissioners to affix a meter to record and measure the amount of water and cl. 317 which provided that the cost of providing the meter should be borne by the person requiring the supply. The present sub-section (1) was framed in accordance with the recommendations of the Select Committee, para. 88 quoted in the notes to sub-section (2).

**Sub-section 2.** "We consider that the cost of a meter for registering the amount of water, gas or electricity consumed should be borne by the municipal fund and have therefore amended sec. 305. Old clauses 317 and 328 become superfluous and have been omitted." Report of the Select Committee, para. 88.

The wording of sub-section (2) and the provision about fitting a meter at the cost of the municipality corresponds to sec. 295, 2nd para. of B. M. Act. The words in the Bengal Act runs thus "It shall be lawful for the Commissioners to provide a water meter at their own expense."

The Local Government may make and impose rules and conditions under which the Municipal Commissioners may allow house connections with the service water-pipes. The municipality is therefore, if the rules direct, entitled to compel the owner or occupier of a house to pay for the cost of water meter to measure the amount of water consumed in the house or to cut off water-supply for non-payment of the same. The rules framed cannot be said to be *ultra vires* if they provide that house owners shall pay

fo: the meter. Nagendralal Das *vs.* Chairman, Chittagong Municipality, 47 Calcutta 426=27 C. W. N. 240.

Inspection and supervision of connections.

**306.** The ferrules, communication pipes, connections, meters, stand-pipes, and all fittings thereon or connected therewith, leading from mains or distribution cables, wire, pipes, drains or channels into any house or land, and the wires, pipes, fittings and works inside any such house or within the limits of any such land, shall in all cases be executed subject to the inspection and to the satisfaction of the Commissioners.

#### NOTES.

The section corresponds to sec. 291 of B. M. Act and sec. 188 of Punjab Municipal Act III of 1911.

Power to enter premises.

**307. (1)** Any officer authorized in that behalf by the Commissioners may, between the hours of seven in the forenoon and five in the afternoon, enter into or on any house or land for the purpose of inspecting or repairing any water, gas, electric or other installation, and for taking readings of meters connected therewith.

**(2)** If such officer at any such time is refused admittance into such house or land for the purposes aforesaid, or is prevented from making any such examination, the Commissioners may forthwith cut off the supply of gas, water or electricity, as the case may be, from such house or land:

Provided that nothing hereinbefore contained shall authorize an entry into any room appropriated for the zenana or residence of women which, by the custom of the country is considered private, unless a notice in writing of not less than four hours is given.

#### NOTES.

The section corresponds to sec. 292 of B. M. Act and sec. 205 of Punjab Municipal Act III of 1911.

**308.** Whenever water, electricity or gas is supplied under this Chapter through a meter, it shall be presumed that the quantity or quality indicated by the meter has been consumed until the contrary is proved.

## NOTES.

The section corresponds to sec. 278 of the Calcutta Municipal Act (B. C. Act III of 1899).

**309.** When any meter attached to the communication pipe or connection of any house or land is out of order or under repair, the Commissioners shall forthwith replace it by another.

Commissioners to replace damaged meter.

## NOTES.

The section corresponds to sec. 275 of Calcutta Municipal Act (Act III of 1899 B. C.).

Testing of meter,

**310. (1)** If the owner or occupier of any house or land to which water, electricity or gas is supplied through a meter desires to have the meter tested, he may send a written application to the Commissioners, and such application shall be accompanied by a fee of five rupees.

**(2)** Upon receipt of any such application and fee, the Commissioners shall forthwith cause such meter to be tested, at a time and place to be specified in a notice to be served upon such owner or occupier.

**(3)** If such meter is found, upon being so tested, to be incorrect by more than two per cent., the said fee shall be returned to the person who sent it.

## NOTES.

The section corresponds to sec. 274 of the Calcutta Municipal Act (Act III of 1899 B.C.).

The fee of five rupees and the penal clause of forfeiture would seem to prevent frivolous and vexatious applications.

Penalty for fraud in respect of meter.

**311. Any person who fraudulently—**

**(a)** alters the index to any meter, or prevents any meter from duly registering the quantity or quality of water, electricity or gas supplied, or

**(b)** abstracts or uses water, electricity or gas before it has been registered by a meter set up for the purpose of testing the quantity or quality of the same,

shall be liable to a fine not exceeding one hundred rupees.

NOTES.

The section corresponds to secs. 276 and 574 of the Calcutta Municipal Act (Act III of 1899 B. C.)

The section penalises fraudulent alterations of the index of any meter and prevention of the meter to duly register the quantity or quality of gas, etc., supplied or the use of water, electricity or gas which has not passed through the meter.

**312. Any person who wilfully or negligently injures or suffers to be injured any meter or any of the fittings of any meter shall be liable to a fine not exceeding one hundred rupees.**

Penalty for injuring-meter

The section corresponds to sec. 277 of the Calcutta Municipal Act (Act III of 1899 B. C.).

Wilful or negligent damage to any meter is made punishable by this section.

SPECIAL PROVISIONS RELATING TO WATER-SUPPLY

**313. In any municipality in respect of which a scheme for a supply of water has been sanctioned under section 294 or section 296, and in which a water-tax is imposed by the Commissioners, the Commissioners shall provide a supply of water for domestic purposes within the limits of the municipality, and for this purpose shall cause such mains and pipes to be laid, and such tanks, reservoirs or other works to be made and constructed, as shall be necessary for the supply of water in the chief public roads; and they may also erect in all such roads sufficient and convenient stand-pipes or pumps for the use of the inhabitants of the municipality for domestic purposes.**

The Commissioners to provide water supply.

NOTES.

The section corresponds to sec. 287 of B. M. Act.

The Commissioners shall be bound to provide a supply of water for domestic purposes within the municipal limits, i.e., apparently the chief public roads, when a scheme for supply of water has been sanctioned under sec. 294 or sec. 296 and a water-tax has been imposed. For this purpose they are empowered to lay down such mains and pipes and to construct such stands and other works as shall be necessary and to erect sufficient and convenient stand-pipes or pumps; what is sufficient being left to them to decide in their discretion. The section does not draw any distinction between



the supply of water in the chief public roads for watering them, and the supply by means of stand-pipes or pumps in all such roads for domestic purposes; as in the corresponding section of the Bengal Act.

It is only when a scheme for water-supply has been sanctioned either under sec. 294 or sec. 296 and a water-tax has been imposed that this and the following section will apply.

"Water for domestic purposes" is defined by sec. 3 (81) and a rate payer may have water led to his premises for such purpose under sec. 303 and for business purposes under sec. 315.

**Cause such mains and pipes to be laid.** In order to carry out the water-supply this section and secs. 300 and 301 give the Commissioners powers to enter upon land belonging to others and to lay the pipes forming the connections through or under such lands without the owners' permission, though not without giving them reasonable notice and reasonable compensation in proper cases. See secs. 300 and 301 and the notes thereto. The power of inspection and supervision of the connections is given by secs. 306 and 307. The carrying out of the projects and the maintenance of the supply is subject to the control of the Sanitary Board and its engineers. See appendix.

**314. The Commissioners at a meeting shall determine what supply of water for domestic purposes shall be maintained in their distribution pipes and mains, and during what hours such supply shall be continued; and any rule made under this section shall be published in such manner as the Commissioners may direct, and shall not be altered except with the sanction of the Commissioners at a meeting:**

Maintenance of supply of water.

Provided that where, in the opinion of the Local Government, the supply of water provided by the Commissioners in any municipality is defective or insufficient, the Local Government may require the Commissioners to provide such supply and at such hours as may be prescribed.

#### NOTES.

The section corresponds to sec. 289 of B. M. Act.

"Section 289 of the Bengal Act required the Commissioners to determine what pressure of water is to be maintained. It has been impossible to maintain the same pressure throughout a system or to keep the pressure uniform; this clause instead requires them to determine what the supply

sec. 314-316

shall be and enables the Local Government to control the supply." Notes on clauses, para. 114.

Under this section the Commissioners at a meeting are to determine the quantity of water to be maintained in the pipes and the hours of supply and when the supply prescribed by the Commissioners is defective or is insufficient, the Local Government can require the Commissioners to provide proper supply and fix proper hours.

**315. The Commissioners may supply water for purposes other than domestic purposes, and may, subject to such charges, at the rates prescribed, as may have been fixed by the Commissioners at a meeting, cause or allow to be laid down, the necessary pipes and works of such dimensions and character as may be approved by them.**

Supply for business.

#### NOTES.

The section corresponds to sec. 204 of B. M. Act.

The supply of water at proper rates for business purposes is prescribed by the section and any rate-payer may have water led to his premises for such purpose. The power under this section can be exercised by the Chairman as he under the Act exercises the powers vested in the Commissioners. See sec. 24.

This section read alone seems to contemplate supply of water for business purposes not only within the municipality but also outside its area; sec. 320 gives discretion to the Commissioners to allow persons not residing within the limits of a municipality to take or be supplied with water for domestic purpose, this provision by implication seems to limit the power of the Commissioners to supply water for domestic purposes only and not to any other purpose to persons residing beyond the municipal limits. Sec. 315 and sec. 320 read together seem to lay down that supply of water for business purposes can be made only within the limits of the municipality and not outside it.

**316. When communication pipes have been laid down for the purpose of leading water into any house or land, the Commissioners at a meeting may, subject to such rate or rates as may be prescribed, determine the charges to be levied from the occupiers of such house or land for all water consumed:**

Charge for water supplied.

**Provided that the Commissioners shall deduct from the charges on account of the water supplied in any month, one-twelfth of the water-tax assessed on the holding.**

## NOTES.

The section is new. Para (1) in a way corresponds to sec. 295 of the B. M. Act. The proviso corresponds to sec. 280 (2) of U. P. Act II of 1916.

"The occupier will have to pay for water supplied to his holding through communication pipes, but will deduct one-twelfth of the water rate assessed on the holding." Notes on Clauses, p. 115.

The Commissioners can charge proper fees from house or land owners at prescribed rates for the supply of water through communication pipes.

"Prescribed" defined by sec. 8 (22) and means prescribed by rules made by Local Government under sec. 825 (k).

The water-tax is levied on the annual value of holdings [see sec. 82 cl. (c)] and is meant for the upkeep of the water-supply and maintenance of pipes and stand-pipes on chief public roads (sec. 313); that tax does not cover the supply of water to any house or land; so when communication pipes are laid separate charges have to be paid but from the charges for any month one-twelfth of the tax levied shall be deducted; thus relieving the rate-payers from double-payment. See in this connection Negendra Lal Das *vs.* Chairman, Chittagong Municipality, 47 Cal. 426.

Power to turn off water. **317. (1) The Commissioners may cause the water to be turned off from any house or land which is supplied with water, after giving notice in writing of not less than twenty-four hours,—**

- (a) if the house or land is unoccupied,
- (b) if the person supplied with water neglects to pay the water-tax or the charge made for water supplied at the due time for the payment thereof, or fails to pay for the cost of a meter,
- (c) if any pipes, works or fittings connected with the supply of water to such house or land are found on examination by any officer of the Commissioners authorized in that behalf, to be out of repair to such an extent as to cause waste of water, or
- (d) if the owner or occupier of such house or land wilfully or negligently misuses, or causes waste or contamination of water,

and may recover from the owner or occupier of such house or land, or from the person liable to pay the water-tax or charge, as the case may be, the expenses incurred in turning off the water:

**provided that the stopping or cutting off the supply of water shall not relieve any person from any penalty or liability which he may have incurred.**

**(2) When the water has been turned off under clause (b) of sub-section (1) of this section, the Commissioners shall restore the supply on payment of all sums for non-payment of which the water was turned off, together with the expenses incurred in turning off the water and the expenses (if any) to be incurred in restoring the supply.**

#### NOTES.

Sub-section (1) (a) corresponds to sec. 288 of the Cal. Mun. Act (Act III of 1899 B.C.); sub-sec. (1) (b) corresponds to sec. 297 of B. M. Act, clause (c) corresponds to sec. 293 of B. M. Act and clause (d) corresponds to sec. 101 of Punjab Act III of 1911.

“ The various sections of the Bengal Act relating to the cutting off of water are here brought together.” Notes on Clauses, p. 116.

The Commissioners can turn off water from any house or land if it is unoccupied, or if the person supplied with water neglects to pay the water-tax or the charges for water under sec. 316, or fails to pay for the cost of a meter if the rules framed by the Local Government under sec. 325 require that the person requiring the house-connections shall pay for the meter, or if the connection pipes or fittings are not in proper condition and cause waste; or if the owner or occupier misuses or causes waste or contamination of the water.

**Clause (b). Fails to pay for the cost of a meter.** Sub-sec. (1) of sec. 305 makes it optional with the Commissioners to instal meters for the purpose of preventing waste and making the owners or occupiers pay for the quantity of water supplied; and sub-sec. (2) no doubt lays down that the cost of providing a meter shall be paid out of the municipal fund. But sec. 308 lays down that the power to permit connections to houses and lands is subject to conditions and restrictions imposed by rules made by the Local Government under sec. 325 and the terms determined by the Commissioners at a meeting.

If the Local Government make and impose rules and conditions under which the Municipal Commissioners may allow house connections with service water pipes and the rules lay down that a holding connection shall comprise a meter along with other things and further that the entire cost of the fixing of the fitting must be paid by the owner or occupier wanting the connection, then the rules of Local Government cannot be said to be *ultra vires*. And in such a case the municipality will be entitled to compel the owner

or occupier of a house to pay the cost of water meter to measure the amount of water consumed in the house or to cut off water-supply for non-payment of the same. *Nagendra Lal Das vrs. Chairman Chittagong Municipality*, 47 Cal. 426=27 C. W. N. 240.

**Clause (d).** "Causes waste" has the same meaning as "causes or allows to run to waste."

Water cannot be said to be allowed to run to waste because it is used by families of tenants who are not of the family of the owner. The user for legitimate household purposes by more than one family in the house is not "waste" within the meaning of the definition of "waste" in rule 4 (f) (8) of the Surat Municipality Rules. *Surat City Municipality vrs. Tyabji Daudbhai*, 32 Bom. 460. This principle will be applicable to cases of a similar nature under this Act.

The turning-off of water supply is only one of the remedies of the Commissioners and the person who causes waste of water can be punished under sec. 321; one who contaminates the water can also be dealt with by-laws framed by the Commissioners.

Causes contamination:—i.e., pollution of water, thus endangering the whole water-supply of the municipality; one way of contaminating the water is by using defective pipes which may lead to lead poisoning.

Inspection of works and pipes before connection.

**318. (1)** Before a connection for the supply of water from the distribution pipes of the Commissioners to any house or land is sanctioned, the Commissioners shall cause all the works, pipes and fittings within the said house or land to be inspected by an officer appointed by them in that behalf.

(2) The cost of such inspection shall be payable in advance by the person applying for such connection at such rates as the Commissioners at a meeting shall from time to time direct.

(3) Until such officer has certified to the Commissioners that the works, pipes and fittings have been executed and put up in a satisfactory manner, a connection with the Commissioners' distribution pipes shall not be permitted.

(4) Notwithstanding anything contained in this section, if at any time after a certificate has been granted under sub-section (3), the Commissioners are satisfied that any work, pipe or fitting is unsuitable or results in a waste of water, the Commissioners may require the person who provided such work, pipe or fitting, or the owner of the house or land, to alter or add to it at his own cost.

## NOTES.

The section corresponds to section 301 of B. M. Act.

**319. No work for introducing a supply of water to any house shall be commenced by the owner without sending a specification and estimate of the cost thereof to the occupier, nor by the occupier without sending such specification and estimate to the owner.**

## NOTES.

The section corresponds to sec. 304 of B. M. Act.

The owner or the occupier who applies for house connection is liable to pay the cost of the connection pipes and other fittings and the charges for water supplied are to be paid by the occupier (sec. 316); the house connections cannot be commenced by one without sending a specification and estimate of the cost to the other. See in this connection sec. 324 according to which in the absence of agreement to the contrary the owner is to bear the cost of keeping the house connection works in repair and in default the occupier can do it and deduct the expenses from the rent.

**320. It shall be within the discretion of the Commissioners to allow any person not residing within the limits of the municipality to take or be supplied with water for domestic use, on such terms as the Commissioners at a meeting may from time to time prescribe.**

Permission to persons outside the municipality to take water.

## NOTES.

The section corresponds to sec. 300 of B. M. Act.

Sec. 315 empowers the Commissioners to supply water for business purposes to persons residing within the limits of the Municipality. Water for domestic purposes can be supplied to any one whether residing within the municipality or not but no discretion is given to the Commissioners to supply water for business purposes to persons residing without the municipal limits. This section read with sec. 315 seems to limit the power of the municipality to supply water for business purposes to persons residing only within the municipality. See notes to sec. 315.

Sec. 323 prescribes the penalty for taking water outside the limits of the municipality without the permission of the Commissioners.

**321. (1)** The occupier of any house or land in which water supplied by the Commissioners under this Chapter is, from negligence or other circumstances under the control of the said occupier, wasted, or in whose house or land the pipes, works or fittings for the supply of water are found to be out of repair to such an extent as to cause waste of water, shall be liable to a fine not exceeding twenty rupees.

**(2)** Any person otherwise causing waste of water supplied by the Commissioners shall be liable to a fine not exceeding five rupees.

#### NOTES.

Sub-section (1) corresponds to section 298 and sub-sec. (2) corresponds to sec. 299 of B. M. Act.

**Other circumstances under the control of.** The waste must be caused either by the neglect of the occupier or from any cause which the occupier could with reasonable care and caution prevent.

"Water is wasted" means water is "allowed to run to waste." In a Bombay case in which the Surat Municipality framed rules for the application for water-connections and the rules further laid down that the municipality could at any time cut off the supply or the connection in case "if water is allowed to run to waste after the owner or occupier has been warned by a written notice issued by the municipality not to allow it to be so wasted" [rule 4 (f) (8) of the Surat City Municipality rules]. The municipality threatened to cut off the connection as in their opinion the plaintiff allowed the water to run to waste, inasmuch as it was used by families of tenants who were not members of the family of the plaintiff. The application of the words "run to waste" depended upon the construction of the definition of "domestic purpose" which meant nothing more or less than legitimate household purposes. The user for legitimate household purposes by more than one family in the house was not waste within the meaning of the definition. *Surat City Municipality vrs. Tyabji Doudbhai*. 82 Bombay 480.

Sub-section (1) deals with wastage from negligence or causes within the control of the occupier or from defective fittings and pipes. Sub-section (2) deals with wastage of water from causes which do not come under sub-section (1); thus taking out water from a connection pipe before it has passed through a meter and allowing it to run to waste would come within this sub-section.

Penalty for diverting or obstructing water.

**322. Any person who unlawfully flushes, draws off, diverts or takes water from any water-works belonging to, or under the control of the Commissioners, or from any water or streams by which such water-works are supplied, shall be liable to a fine not exceeding one hundred rupees.**

#### NOTES.

The section corresponds to sec. 303 of B. M. Act.

Penalty for taking water outside municipality without permission.

**323. Any person who takes or causes to be taken for use, outside the limits of the municipality, water supplied by the Commissioners, without the permission of the Commissioners, shall be liable to a fine not exceeding fifty rupees.**

#### NOTES.

The section corresponds to sec. 300 of B. M. Act.

The Commissioners can supply water for domestic purposes to any person residing either within or without the municipality, and for business purposes under sec. 315 read with sec. 320 to persons living within the municipality only; taking water without the permission of the Commissioners is punishable by this section.

Owner to bear the cost of keeping works in repair.

**324. Except in the case of a special agreement to the contrary, the owner of any house or land shall bear the expense of keeping all works connected with the supply of water to such house or land in substantial repair, and if he fails to do so, the occupier may, after giving the owner three days' notice in writing, himself have the repairs executed and deduct the expenses thereof from any rent which is due from him to the owner in respect of such house or land.**

#### NOTES.

The section corresponds to sec. 305 of B. M. Act and sec. 265 of the Calcutta Municipal Act, (Act III of 1899 B. C.)

The owner and the occupier may make their own agreements as to who is to keep the fittings and house connections in proper repairs and pay costs; if there is no such agreement then the owner is the person who is responsible for keeping them in proper repairs and paying costs; if he fails to do so the occupier can after giving notice to the owner have the proper repairs done and deduct the expenses from the rents due.



## RULES.

Power to make - **225. The Local Government may make rules consistent with this Act to regulate—**  
rules.

- (a) the preparation by the Commissioners or by a joint-committee constituted under section 51, or by an officer deputed for the purpose, of schemes for water-supply, lighting, drainage or sewerage;
- (b) the procedure to be followed in obtaining the sanction of the Local Government to such schemes;
- (c) the manner of carrying out such schemes;
- (d) the size and nature of the water-works, mains, pipes, cables, wires, drains or channels to be constructed or laid by the Commissioners for the supply of water, electricity or gas, or for drainage or sewerage;
- (e) the maintenance of municipal water-works and of pipes and fittings in connection therewith;
- (f) the size and nature of the stand-pipes or pumps to be erected by the Commissioners and of the ferrules and fittings for the regulation of the supply of water, gas or electricity;
- (g) the mains or pipes in which fire-plugs are to be fixed and the places at which keys of the fire-plugs are to be deposited;
- (h) the periodical analysis of a qualified analyst of the water supplied by the Commissioners;
- (i) the conservation and prevention of injury or contamination to sources and means of water-supply and appliances for the distribution of water, whether within or without the limits of the municipality;
- (j) the manner in which connections with water-works or with the lighting, drainage or sewerage system of the Commissioners may be constructed or maintained and the agency which shall or may be employed for such construction or maintenance;
- (k) the rates at which the charges for water, gas or electricity supplied may be levied by the Commissioners;

sec. 353.

(d) the regulation of all matters and things connected with the supply and use of water, electricity or gas and the turning on and turning off and preventing the waste of water, electricity or gas; and

(m) any other matter relating to the supply of water, electricity or gas or of drainage or sewerage in respect of which this Act makes no provision or insufficient provision and further provision is, in the opinion of the Local Government necessary:

Provided that no rule shall be made under this section affecting a cantonment or a part of a cantonment without the previous sanction of the Governor-General in Council.

### NOTES.

Clause (d) corresponds to sec. 235 of U. P. Act III of 1916; the other clauses are new and not to be found in any other Municipal Act.

The section gives wide power to the Local Government to make rules regulating the preparation of schemes and the procedure to be followed in obtaining sanction to the schemes for water-supply, lighting, drainage and various matters relating to the supply of water, gas, electricity or drainage or sewerage.

**Consistent with this Act.** For use of the similar expression and meaning of it see sections 19, 42, 81, 195, 274, 281, 291.

The expression means consistent with the aim, scope, object and policy of the Act. See *Tribhuban Chunilal vs. The Ahmedabad Municipality*, 27 Bombay 221.

The rules of the Local Government are made after previous publication and they take effect after publication in the gazette. See sec. 353.

The old rules remain in force until they are superseded by new rules. See sec. 391.

## CHAPTER X.

### VEHICLES PLYING FOR HIRE.

Power to make by-laws to regulate vehicles plying for hire.

**328. (1) The Commissioners at a meeting may make by-laws to regulate vehicles used for the conveyance of passengers which are kept or are offered or ply for hire within the municipality, whether by times or by**

distance, and may by such by-laws provide for all matters relating to such vehicles in respect of which this Act makes no provision or insufficient provision and provision is declared by the Commissioners, with the sanction of the Local Government, to be necessary:

Provided that no such by-law shall apply to any vehicle used exclusively on a railway or tramway.

(2) In particular, and without prejudice to the generality of the foregoing power, such by-laws may—

- (a) require the drivers of such vehicles to take out licences, and declare by whom, on what fees, for what period, and subject to what conditions such licences may be granted and revoked;
- (b) require the owners of such vehicles, and of animals used to draw them, to register the same and to notify any change of ownership, and declare by whom, on what fees, in what manner, and in what classes such vehicles and animals may be registered, and empower the registering officer to refuse to register any vehicle or animal which is unfit to be registered in the class in which the owner has applied to register it;
- (c) provide for facilitating the identification of such vehicles and animals and licensed drivers by the display of name or number plates or tickets or in any other manner;
- (d) prescribe the conditions subject to which such vehicles may be plied for hire in public places;
- (e) prescribe and limit the fares which the owner or driver of any such vehicle may be entitled to demand and take for hire of such vehicle and the manner in which a list of fares shall be displayed in or on such vehicle;
- (f) limit the loads to be carried by such vehicles or by any class of such vehicles;
- (g) provide for the preparation and publication of a table of distances;
- (h) provide for the protection of weak, lame and sickly horses; and

noyance to the public or any person, or of danger or injury to  
 (4) provide generally for the prevention of danger, injury or an-  
 property, or of obstruction to traffic.

#### NOTES.

The section is based on Bengal Act II of 1891. (Calcutta Hackney Carriage Act) and sec. 298 (2) (H) (c) of U. P. Act II of 1916.

" A power to make by-laws is substituted for the detailed procedure laid down in the Calcutta Hackney Carriage Act. Only those substantive provisions of the Act which could not be made the subject of by-laws have been included in the chapter. The scope of the provisions have been widened so as to give power to control all vehicles plying for hire (other than carts) and their drivers." Notes on clauses, para. 117.

The section relates to vehicles plying for hire and gives power to the Commissioners to frame by-laws for regulating them and providing for all matters relating to such vehicles in respect of which this Act makes no provision or insufficient provisions and also making other provisions which the Commissioners think necessary but these provisions shall be made only with the sanction of the Local Government.

By the by-laws framed under this section the Commissioners may prescribe, that drivers of hackney carriages should take out licences on payment of fees, that owners of such carriages shall register their names and notify changes of ownership, and in what classes any vehicle and animals are to be registered and how the registration plates and list of fares are to be fixed, and limit the loads to be carried by such vehicles or class of such vehicles and regulate other matters relating to the prevention of danger, annoyance to the public or any person or danger to any property and obstruction to traffic and local requirements.

The by-laws have to be framed in strict accordance with sec. 354 to give legal validity to them. Old by-laws, if any remain in force until new by-laws under this Act are framed. See sec. 391.

Model by-laws under sec. 326 are given in the Appendix.

**327. The Local Government may, by notification, include in any municipality for the purposes of this Chapter any area in the vicinity of the same and defined in the notification, provided that when the area to be included is a cantonment or a part of a cantonment, the notification in respect of it shall not be published without the previous sanction of the Governor-General in Council.**

## NOTES.

This section was not in the original Bill of 1921; it was introduced on the recommendation of the Select Committee. "We have restored an existing provision of the Hackney Carriage Act." Report of the Select Committee, p. 84.

The section is based on sec. 4 of the Calcutta Hackney Carriage Act

When any area is included in any municipality for the purposes of this Chapter, all the by-laws under sec. 326 and secs. 328 to 338 of this Act will apply to the area and the vehicles kept for hire therein. When a tax on vehicles, horses and other animals is imposed by the Commissioners under sec. 137 then the owner of the vehicle or animal which is kept without the municipality but is used in the ordinary course within it, is required to pay the tax and the subsequent sections 138 to 150 apply to such vehicles or animals; but no tax under sec. 137 can be levied when Chapter X of the Act applies, and Chapter X cannot apply to any area outside the municipal limits without a notification under this section.

Vehicles kept outside the municipal limits but which ply for hire within it would come within the purview of the by-laws framed by the Commissioners under sec. 326 even without the notification under this section; but when registration fees are realised from them no separate tax under section 137 can be levied from them. In order to secure better control over vehicles and animals kept outside the municipal limits but which ply for hire within it, and make all the other sections of this Chapter applicable to them a notification under this section is necessary; otherwise only sec. 137 and the by-laws under sec. 326 would apply to them and not the other provisions of this Chapter.

**328. (1) Any person who for the purposes of deception uses, wears or has in his possession any plate or ticket resembling or intended to resemble a plate or ticket required by a by-law under section 326 to be affixed to any vehicle or to be carried or worn by the driver thereof, shall be liable to a fine not exceeding two hundred rupees.**

**(2) Any police officer or any person empowered in this behalf by the Commissioners may seize and take away any plate or ticket used, worn or possessed as aforesaid wheresoever the same may be found, and may deliver it to the registering officer.**

## NOTES.

Sub-section (1) corresponds to sections 20 (1) and 28 (1) and sub-sec. (2) corresponds to secs. 20 (2) and sec. 28 (2) of the Calcutta Hackney

add. 1891-92

Carriage Act (Act II of 1891 B. C.) Section 20 of that Act prescribed the penalty for using counterfeit plate and sec. 28 the penalty for using counterfeit tickets.

Production of licence before Magistrate.

**329. A licensed driver who is summoned before a Magistrate to answer any charge preferred against him under this Chapter or any by-law framed thereunder shall carry with him his licence and produce the same if required to do so, and any driver who, on such requisition, fails to produce such licence shall be liable to a fine not exceeding five rupees.**

NOTES.

The section corresponds to section 29 (1) of the Calcutta Hackney Carriage Act (Act II of 1891 B.C.).

Endorsement of conviction on driver's licence.

**330. On the conviction of a licensed driver of an offence under this Chapter or any by-law framed thereunder, a Magistrate may endorse on the licence of such driver the nature of the offence, the date of conviction and the amount of penalty inflicted.**

NOTES.

The section corresponds to section 29 (2) of the Calcutta Hackney Carriage Act (Act II of 1891 B. C.)

Revocation or suspension of driver's licence on conviction.

**331. (1) On the conviction of a licensed driver of an offence whether under this Act or under any other Act, a Magistrate may revoke the licence of such driver or suspend the same for such time as the Magistrate thinks proper, and for that purpose may require the driver or any other person in whose possession such licence and any ticket thereto belonging may be, to deliver up the same.**

**(2) Any driver or other person who being so required refuses or neglects to deliver up such licence and such ticket shall be liable to a fine not exceeding twenty rupees.**

**(3) Every licence and every ticket so delivered shall be forwarded by the Magistrate to the Commissioners together with a memorandum of the sentence in the case.**

**(4) The Commissioners shall cause the fact of such sentence to be entered in the register of licences and shall either suspend or cancel the licence according to the sentence of the Magistrate; and if it has been**

suspended the Commissioners shall, on application, at the end of the time of suspension, cause the licence or ticket to be re-delivered to the person to whom it was granted.

#### NOTES.

The section corresponds to section 30 of the Calcutta Hackney Carriage Act (Act II of 1891 B. C.)

Penalty on driver for refusing to attend at premises of owner.

**332. Any driver employed as such by the owner of any registered vehicle who, without sufficient excuse, refuses or neglects to attend at the premises of such owner for the purpose of driving such vehicle shall, on complaint by such owner, be liable for each offence to a fine not exceeding ten rupees, which or any part of which, may by order of the Magistrate, be paid to the owner as compensation.**

#### NOTES.

The section corresponds to section 37 of the Calcutta Hackney Carriage Act (Act II of 1891 B. C.)

Penalty for refusing to let vehicle for hire.

**333. Any owner or driver of a registered vehicle who without sufficient excuse refuses to let such vehicle for hire, shall be liable for every such offence to a fine not exceeding fifty rupees, which, or any part of which, may by order of the Magistrate be paid to the person aggrieved by the refusal.**

#### NOTES.

The section corresponds to section 35 of the Calcutta Hackney Carriage Act (Act II 1891 B.C.).

Power to summon owner to appear and to produce driver.

**334. (1) When a complaint is made before a Magistrate against the driver of a registered vehicle for any offence committed by him against the provisions of this Chapter or of any by-law framed thereunder, such Magistrate may summon the owner of the vehicle personally to appear and to produce the driver of the vehicle to answer the complaint.**

**(2) If such owner having been so summoned, without a reasonable excuse, neglects or refuses to appear or to produce the driver according to the summons, he shall be liable to a fine not exceeding fifty rupees, and so from time to time, as often as he shall be so summoned, until such driver be produced by him:**

**Provided that, if such owner, without a reasonable excuse, neglects or refuses to appear and produce the driver on the second or any subsequent summons requiring him to do so, the Magistrate may proceed to hear and determine the complaint in the absence of the owner or driver or either of them.**

## NOTES.

The section corresponds to section 38 of Calcutta Hackney Carriage Act (Act II of 1891 B. C.).

**335. If any person who has hired a registered vehicle refuses to pay to the owner or driver thereof on demand the fare payable under by-laws framed under this Chapter, the Magistrate may order payment by such person of such fare and also of such compensation for loss of hire as may seem reasonable, and in default of payment, such fare and compensation may be recovered in the same way as a fine.**

## NOTES.

The section corresponds to sec. 39 (2) of the Calcutta Hackney Carriage Act (Act II of 1891 B. C.)

**336. Any person who, having used any registered vehicle, attempts to evade payment of the fare or any portion of the same which he may be deemed liable to pay, shall be liable to a fine not exceeding fifty rupees, in addition to the payment of such fare and compensation as is mentioned in section 335.**

## NOTES.

The section corresponds to sec. 39 (1) of the Calcutta Hackney Carriage Act.

**337. In the case of any dispute between the hirer and driver of a registered vehicle the hirer may, if any Magistrate be then sitting, require the driver to drive to the court of such Magistrate, or, if no Magistrate be then sitting, to the registering officer, and if the driver refuses to obey such requisition, the hirer may give the driver into the custody of the nearest police officer; and such police officer, shall thereupon take the driver and the hirer together with the vehicle and horses (if any) to such Magis-**



trust or registering officer, and the Magistrate or registering officer, as the case may be, shall hear and determine the dispute in a summary way.

#### NOTES.

The section corresponds to sec. 42 of the Calcutta Hackney Carriage Act.

**338.** (1) If through any act, neglect or default on account whereof any person has been fined under this Chapter or any by-laws framed thereunder, any damage to the property of the Commissioners has been committed by such person, he shall be liable to make good such damage as well as to pay such fine.

(2) The amount of such damage shall be determined by the Magistrate by whom such person has been fined, and in default of payment of the amount of such damage on demand, the same may be levied in the same manner as a fine.

#### NOTES.

The section corresponds to sec. 57 of the Calcutta Hackney Carriage Act (Act II of 1891 B. C.)

### CHAPTER XI. MISCELLANEOUS.

#### EDUCATION.

Duties of Education Committee.

**339.** It shall be the duty of an Education Committee appointed under section 49, subject to the control of the Commissioners and to the rules made by the Local Government,—

- (i) to superintend all matters connected with the finance, accounts, maintenance, management and teaching of all schools maintained by the Commissioners, and
- (ii) to determine the conditions to be complied with when grants are made by the Commissioners to schools.

#### NOTES.

The section corresponds to sec. 65 B (8) of the Local Self-Government Act (Act III of 1885 B. C.)

**Education Committee**—see notes to sec. 49 ante.

in view of the wide extent of the functions entrusted to the Commissioners and to facilitate the speedy transaction of their work, provision is made for the appointment by them of Committees to deal with the various branches of Municipal Administration, while a new departure is made in allowing Commissioners to appoint persons of either sex, who are not Commissioners but who have special qualifications to be members of any Committee, in order that the Commissioners may have the benefit of their advice." Statement of Objects and Reasons, para. 8.

"To further the interests of education the Bill provides for the constitution of an Education Committee and for the grants of aid by Government for educational purposes, and gives the Local Government power to make rules." Statement of Objects and Reasons, para. 6 (2).

The Education Committee is to superintend the finance, accounts, management and the teaching in the schools maintained by Commissioners and when grants are given by the Commissioners to schools to determine the conditions which the school authorities are to comply with.

The number which the Education Committee will consist of and their duties, power and liabilities, disqualifications and disabilities are prescribed by sec. 50.

Transfer of funds  
by Government for edu-  
cation.

**340. (1) The Local Government may from time to time transfer to the Commissioners such funds as it may deem necessary for expenditure on—**

- (a) the improvement of any school or class of schools within the municipality under private management; and**
- (b) the maintenance or improvement of any school or class of schools maintained and managed by the Commissioners; and**
- (c) the provision of buildings to be used as students' hostels in connection with any school mentioned in clauses (a) and (b).**

**(2) The Commissioners shall be charged with and be responsible for the proper distribution of funds transferred under sub-section (1).**

#### NOTES.

The section corresponds to section 65 of the Bengal Local Self-Government Act (Act III of 1885 B. C.).

**Schools under private management:**—Evidently means schools which are started and managed by private persons or bodies.

Power to make rules regarding maintenance and management of schools.

**341. The Local Government may make rules consistent with this Act—**

- (i) determining the classes of schools which may be maintained or aided by the Commissioners;
- (ii) regulating the construction and repair of buildings connected with such schools, including hostels;
- (iii) regulating the appointment and salaries of masters and assistant masters of such schools; and
- (iv) regulating the establishment of scholarships generally, or for the furtherance of technical or any other special form of education.

#### NOTES.

"The Local Government has no power under the present Act to make rules regulating the maintenance and the management of schools in a municipality similar to the power it has in regard to District Board Schools. It is left to the Local Government to prescribe what classes of schools may be maintained or aided by the Commissioners as is now the case with the District Board." Notes on clauses, para. 119.

The section corresponds to sections 62 and 64 of the Bengal Local Self-Government Act (Act III of 1885 B.C.).

**Consistent with this Act**—see notes to sections 19, 42, 81, *ante*.

#### THE LOCAL SELF-GOVERNMENT BOARD.

Constitution of the Local Self-Government Board.

**342. (1) The Local Government shall constitute a Local Self-Government Board for Bihar and Orissa, which shall consist of:—**

- (a) the Minister of Local Self-Government who shall be the President thereof;
- (b) the Secretary to the Government of Bihar and Orissa in the Department of Local Self-Government;
- (c) fifteen members of the Legislative Council to be elected by the Council from among their own number, subject to the following conditions:—

- (i) one member shall be elected from  
tives of urban constituencies of each of the five divisions;

- (ii) one member shall be elected from among the representatives of rural constituencies of each of the five divisions;
  - (iii) the remaining five members shall be elected from among the whole number of members of the Council;
  - (d) such additional members as the Board with the approval of the Local Government may co-opt.
- (2) The Local Government may make rules for—
- (i) the method of election of members,
  - (ii) the term of office of members,
  - (iii) the conduct of business,
  - (iv) the formation of Committees, and
  - (v) the duties and powers of the Board, of Committees, and of members of the Board.

## NOTES.

In the original Municipal Bill of 1921, clause 351 contained provisions for the constitution of a sanitary board and the clause ran thus:—“(1) The Local Government may, by notification constitute a Sanitary Board for Bihar and Orissa and may appoint, either by name or by official designation such persons as it may deem fit to be members thereof.

(2) The said Board shall, when so required advise the Local Government regarding sanitary schemes framed by the Commissioners of a municipality, or by any other local authority, and shall perform such other duties as may be assigned to it by rules made by the Local Government under this or any other Act for the time being in force.”

The reason for the insertion of the present clause as a substantive provision in the Act were stated thus: “The present Sanitary Board is constituted under the definition clause in clause (14 A) of sec. 6 of the Bengal Act. It is preferable it should be constituted under a substantive provision.” Notes on clauses, para. 120.

The present Local Self-Government Board was substituted on the recommendations of the Select Committee which were to the following effect: “We consider that the Local Self-Governing bodies should be in close touch with the Ministry of Local Self-Government and though we fully recognise that the advice of experienced administrative officers of Government is of great value to a municipality, we do not consider that Self-Government will make satisfactory progress if they retain power of control either external or internal.....

We have recommended and attached importance to the constitution of a Local Self-Government Board in place of the former Sanitary Board as we consider that apart from questions of sanitation, there are numerous matters on which the advice of such Board would be valuable and we trust that the members of the Board will keep in touch with the municipalities. We have recommended a somewhat large number of members but have done so in order that Committees may be appointed to deal with the various branches of municipal administration. We have retained the rule-making powers of Government, as we consider this necessary to secure uniformity in municipal administration, while at the same time ensuring that the rules and regulations are adopted to local conditions." Report of the Select Committee, para 1.

**Sub-section (2).** The Local Government may make rules under this sub-section prescribing how the members of the Local Self-Government Board are to be elected, the term of their office, the conduct of their business and the duties and powers of the members of the Board individually and collectively.

#### SARAI AND DHARMSALAS.

Power of Commissioners to regulate sarais and dharmsalas by by-laws.

**343. The Commissioners at a meeting may make by-laws consistent with this Act providing—**

- (a) for the registration and inspection of sarais, dharmsalas and other public hostels within the municipality;**
- (b) for the prevention of overcrowding and the promotion of cleanliness and ventilation therein;**
- (c) for the notices to be given and the precautions to be taken in the case of the outbreak therein of any infectious or contagious disease; and**
- (d) generally for the proper regulation of sarais, dharmsalas and other public hostels.**

#### NOTES.

The section is based on section 298 (2) I (f) of U. P. Act II of 1916

The Bengal Municipal Act sec. 264 provided that no place within such local limits as fixed by the Commissioners should be used without a licence from the Commissioners as a lodging-house or *sarai* and in the category of offensive and dangerous trades was included the keeping of lodging houses or *sarais* which under the Bengal Act required only the taking out of a licence. The Act did not give the Commissioners sufficient control over them and they could not regulate their sanitation.

The Commissioners are given wide powers to regulate by by-laws the *sarais* and *dharmshalas* situated within their municipal limits and control and supervise them fully.

The Bihar and Orissa Places of Pilgrimage Act 1920 (B. & O. Act II of 1920) applies to big centres of pilgrimage like Puri, Deoghar and Gaya and they are controlled and the lodging houses therein are regulated by the Act.

#### REGISTRATION OF BIRTHS AND DEATHS.

Registration of births  
and deaths.

**344. The Commissioners of any municipality, when required by the Local Government to do so, shall provide for the registration of births and deaths within the limits of the municipality in accordance with the provisions of the Bengal Births and Deaths Registration Act, 1873, or any other similar Act for the time being in force.**

#### NOTES.

The section corresponds to section 346 of B. M. Act. The registration of births and deaths was done under Act IV of 1873 (The Bengal Births and Deaths Registration Act). By section 11 of Act IV of 1873 the Commissioners in places to which the District Municipal Improvement Act applied could arrange to keep register of births or deaths or both if by a special meeting they so decided; without a requisition from the Local Government.

"The registration of births and deaths was carried out within municipal areas by the Police, but since April 1913, has been delegated to the municipalities." J. Pargiter's B. M. Act, p. 819.

The Local Government can under this section require the Commissioners to provide for the registration of births and deaths and when they are so required the Commissioners are bound to keep registers of births and deaths occurring within their areas.

Appointment of Sub-  
Registrars at burning-  
ghats & burial-grounds.

**345. The Local Government may require the Commissioners of any municipality to appoint and maintain at any burning-ghat or burial ground a Sub-Registrar for the registration of all corpses brought to such burning-ghat or burial ground for cremation or interment.**

## NOTES.

The section corresponds to section 847 of B. M. Act.

The duties of municipalities as to burial and burning grounds are set out in sections 248 to 258. See notes to those sections.

Information required by Bengal Act IV of 1873 to be given to Sub-Registrar.

**346. Whenever a Sub-Registrar has been appointed for any burning-ghat or burial-ground under the last preceding section, information of the particulars required by section 8 of the Bengal Births and Deaths Registration Act, 1873, to be known and registered may be given in respect of the death of any person whose body is brought to such burning-ghat or burial-ground for cremation or interment to such Sub-Registrar, and information so given shall be deemed to be information given to the Registrar of the District as required by the said section.**

Section 9 of the said Act shall be applicable to all Sub-Registrars appointed under this Act.

## NOTES.

The section corresponds to section 848 of B. M. Act.

The particulars to be recorded and about which informations are to be given are those specified in the forms sanctioned by the Government under sec. 4 of Act IV of 1873 B. C.

Section 9 of the Act runs thus: " Any Registrar who refuses or neglects to register any birth or death occurring within his district which he is bound to register, within a reasonable time after he shall have been duly informed thereof, or demands or accepts any fee or reward, or other gratification as a consideration for making such registry, shall be punishable at the discretion of the Magistrate with fine which may extend to fifty rupees for each such refusal or neglect."

Information of deaths in hospitals.

**347. Whenever a death occurs in any hospital within the limits of any municipality in respect of which the Local Government has directed that all deaths shall be registered under the Bengal Births and Deaths Registration Act, 1873, it shall be the duty of the medical officer in charge of such hospital forthwith to send a notice in writing of the occurrence of such death to the Commissioners in such form as the Local Government may prescribe, and in such case no other person shall be required to give information of such death to a Registrar under the said Act or to a Sub-Registrar under this Act.**

## NOTES.

The section corresponds to sec. 849 of B. M. Act.

## Dogs.

Power to require dogs to carry tokens and to order destruction of those without them.

**348. The Commissioners may, by public notice, require that every dog in respect of which a tax has been paid, or that every registered dog, shall wear a collar to which shall be attached a token to be issued by the Commissioners, and may from time to time give notice that with effect from a date to be specified in the notice every dog found within the municipality without a collar bearing such token will be destroyed.**

## NOTES.

This section is a new one and there is no corresponding section in any other municipal Act.

“ A tax on dogs has long been considered to be desirable both for the prevention of rabies and for the suppression of the annoyance caused by the multitude of pariah dogs wandering about municipalities. A registration of dogs will facilitate destruction of ownerless animals. Under clause 154 (sec. 151) the tax on dogs and a registration fee cannot be levied in the same municipality. Clause 358 and 359 (secs. 848 and 849) provide for the carrying of token by dogs in respect of which tax or fee has been paid.” Notes on clauses para. 48. See also notes to section 82 (1) (g) and (h). The Commissioners may under section 82 (1) (g) and (h) impose a tax on dogs or a fee on the registration of dogs but they cannot be both imposed at the same time. See sec. 153 proviso. Secs. 151 to 153 lay down the provisions as to taxation and registration of dogs. This section empowers the Commissioners to require dogs in respect of which a tax or registration fee has been paid to carry tokens and to order destruction of those without them.

Disposal of mad and stray dogs. **349. (1) The Commissioners, or any person authorized by them in this behalf, may—**

- (i) destroy or cause to be destroyed, or confine, or cause to be confined, for such period as the Commissioners may direct, any dog suffering from any loathsome disease or from rabies, or reasonably suspected to be suffering from rabies; or bitten by any dog or other animal suffering or suspected to be suffering from rabies;**



- (ii) confine, or cause to be confined, any dog found wandering about roads or public places without a collar or other mark distinguishing it as private property, and charge a fee for such detention, and destroy or otherwise dispose of any such dog if it is not claimed within one week and the fee paid; and
- (iii) appoint from time to time, by public notice, certain periods within which any dogs without collars or other marks distinguishing them as private property, found straying on the roads or beyond the enclosures of houses of the owners of such dogs, may be destroyed, and destroy or cause them to be destroyed accordingly.

(2) No damages shall be payable in respect of any dog destroyed or otherwise disposed of under this section.

#### NOTES.

The section is based on section 109 of Punjab Municipal Act (Act III of 1911). Clause (i) corresponds to sec. 249 of U. P. Act II of 1916 and cl. (iii) to sec. 213 of B. M. Act.

The section empowers the Commissioners to destroy or confine dogs suffering or suspected to be suffering from rabies or loathsome diseases, and to confine dogs wandering on streets or public places without any collar or mark distinguishing it as private property, and also to order destruction of stray dogs at certain notified periods. The Bengal Act sec. 213 only provided that stray dogs could be killed at certain notified periods, but this section goes further.

Sub-sec. 2. bars any claim for damages against the Commissioners for destruction or confinement of stray dogs or dogs suffering from diseases or rabies.

Rewards for destruction of noxious animals.

**350. The Commissioners at a meeting may offer rewards for the destruction of noxious animals within the limits of the municipality.**

#### NOTES.

The section corresponds to sec. 214 of the B. M. Act.

The payment of rewards can be made under section 68 (1) (xv) from the municipal fund.

LICENCES.

Holder of licence  
produces it when  
required.

**351. (1) Every person to whom a licence has been granted under this Act shall, at all reasonable times, while such licence remains in force, if thereunto required by the authorities which granted the licence or by any person authorized by them in that behalf, produce such licence to the said authorities or to the person so authorized.**

**(2) Any person who fails to produce his licence when required to produce the same by any person authorized under this section to demand the production thereof shall be liable to a fine not exceeding one hundred rupees.**

NOTES.

The section corresponds to sec. 359 of B. M. Act.

The failure to produce the licence when required is made punishable by this section. Licences are required under this Act for vehicles, horses and other animals under secs. 142 and 143; for erection of platforms under sec. 180 (2); for sale of fuel at burning ghats under sec. 256; for such offensive and dangerous trade, occupation or processes as are enumerated in sec. 259; for markets and shops for the sale of animals, meat, fish, butter, ghee, fruits or vegetables under sec. 276 and when any by-laws under sec. 291 require such a licence; so also for letting of fire-arms, fire-works, fire balloons or bombs when by-laws framed by the Commissioners under sec. 274 (c) require such a licence; for use of a place as a slaughter-house under sec. 279; for sale of drugs under sec. 282; for use as a place of business or trade which under the by-laws under sec. 291 requires a licence; for drivers of vehicles plying for hire when the Commissioners by by-laws under sec. 326 so prescribe.

The Local Government may also make rules and prohibit the use of any place for the purpose of trade or business of a dairyman or as a dairy or for sale of milk or milk products except under a licence from the Commissioners under sec. 281 (1) (a).

The prosecution would be according to sec. 375.

Suspension or re-  
vocation of licence, etc.

**352. Any Magistrate before whom any person is convicted of an offence contrary to the provisions of this Act, relating to the use of any place for a purpose for which a licence is required, or of the non-observance of any of the by-laws relating thereto made under this Act, in addition to the**

fine which may be imposed on such person under this Act, may suspend, for any period not exceeding two months, any such licence.

And the Commissioners, upon the conviction of any person for a second or other subsequent like offence, may cancel his licence.

#### NOTES.

The section corresponds to sec. 278 of B. M. Act.

### CHAPTER XII.

#### PROCEDURE.

##### RULES AND BY-LAWS.

Previous publication  
of rules made by Govern-  
ment.

**353. (1)** The power of the Local Government to make rules under this Act is subject to the condition of the rules being made after previous publication and of their not taking effect until they have been published in the Gazette.

**(2)** Any rule made by the Local Government may be general for all municipalities or for all municipalities not expressly excepted from its operation or may be special for the whole or any part of any one or more than one municipality as the Local Government directs.

#### NOTES.

The section corresponds to sec. 300 of U. P. Act II of 1916 and secs. 351 and 351A of B. M. Act.

The Local Government is empowered to frame rules under secs. 19, 42 (2), 81, 168, 281, 325 and 341 of the Act, to regulate the matters referred to in those sections.

Section 26 of the Bihar and Orissa General Clauses Act lays down the following procedure for the framing of rules and it runs thus:—

“Where by any Bihar and Orissa Act a power to make rules or by-laws is expressed to be given, subject to the condition of the rules or by-laws being made after previous publication, then the following provisions will apply, namely,—

(1) the authority having power to make the rules or by-laws shall before making them publish a draft of the proposed rules or by-laws for the information of persons likely to be affected thereby;

(2) the publication shall be made in such manner as that authority deems to be sufficient, or if the condition with respect to previous publication so requires, in such manner as the Local Government prescribes;

(3) there shall be published with the draft a notice specifying a date on or after which the draft will be taken into consideration;

(4) the authority having power to make rules or by-laws and, where the rules or by-laws are to be made with the sanction, approval or concurrence of another authority, that authority also, shall consider any objection or suggestion which may be received by the authority having power to make the rules or by-laws from any person with respect to the draft before the date so specified;

(5) the publication in the Gazette of any rule or by-law purporting to have been made in exercise of a power to make rules or by-laws after previous publication shall be conclusive proof that the rule or by-law has been duly made."

The procedure prescribed in these clauses 1, 2, 3 shall have to be followed by the Local Government in framing rules and their publication in the official Gazette shall be conclusive proof that they have been duly made and they shall take effect only after such publication.

The rules made under sub-section (1) may according to the directions of the Local Government be applicable generally to all municipalities or to any particular municipality or to any particular area of any municipality.

Confirmation and publication of rules and by-laws made by the Commissioners.

**354. (1) The power of the Commissioners to make rules under this Act shall be subject to the condition of such rules not taking effect until they have been confirmed by the Local Government.**

**(2) The power of the Commissioners to make by-laws under this Act shall be subject to the condition of such by-laws being made after previous publication and of their not taking effect until they have been confirmed by the Local Government and published in the Gazette.**

**(3) The Local Government may, after previous publication of its intention, rescind any rule or by-law which it has confirmed, and thereupon the rule or by-law shall cease to have effect.**

#### NOTES.

Sub-secs. (1) and (2) correspond to secs. 351 and 351A of the B. M. Act and sub-sec. (3) is based on sec. 301 (5) of U. P. Act II of 1916.

This power to frame rules by the Commissioners is given by secs. 38 (1), 43 (1), 51 (2), and 52, and the power to frame by-laws are given by secs. 158 185, 195, 221, 234, 258, 264, 274, 291, 326 and 343.

The following procedure is to be followed by Commissioners in making by-laws:—

(1) All proposed by-laws and rules must be first considered and approved by the Commissioners at a meeting.

(2) A draft of the proposed rules or by-laws shall be published for the information of persons likely to be affected thereby, in the Bihar and Orissa Gazette or in other local papers as the Commissioners think necessary.

(3) There shall be published with a draft a notice specifying a date on or after which the draft will be taken into consideration.

(4) After consideration of any objections the Commissioners shall finally publish the amended by-laws or rules.

(5) After the framing of any rules they are to be sent for confirmation to the Local Government who after consideration of any objections or suggestions which may be received by them shall confirm or modify them as necessary and after such confirmation or modification, the Local Government shall publish it in the Bihar and Orissa Gazette and the publication in the Gazette shall be conclusive proof that the rule has been duly made.

(6) After the framing of the by-laws they are written in and translated into the Vernacular of the District and deposited in the office of the Commissioners and a copy posted up in a conspicuous position in such office and any other public place and a proclamation made that the copy is hung up in the municipality and that the original is open to inspection; and they are then sent for confirmation to the Local Government who after consideration of objections or suggestions which may be received by it shall confirm or modify them as it thinks necessary and after such confirmation the Local Government shall publish it in the gazette and the publication in the gazette shall be conclusive proof that the by-law has been duly made.

(7) The rules confirmed and published by the Local Government shall take effect from the time of their confirmation.

(8) The by-laws previously published according to sec. 356 and subsequently confirmed and again published after confirmation shall take effect from the time of the publication in the gazette.

**Power to frame by-laws**—The Commissioners are empowered to frame by-laws and they should follow the procedure shown in the above clauses in order to give legal validity to them.

These by-laws are local laws supplementary to the general law and intended to further the administration of the municipality according to its special circumstances. The power to frame by-laws includes a power exercisable in the like conditions (if any) to add to, amend, vary or rescind any rules or by-laws so made. See sec. 24 of B. & O. General Clauses Act (Act I of 1917).

The secs. 153, 185, 195, 221, 234, 258, 264, 274, 291, 326, 343 specify the matters on which the Commissioners may make by-laws.

The municipality being the creature of the Act under which it is incorporated, has no inherent powers or any authority, except such as may have been confirmed by the constating enactment. The Acts define their powers, and any order in excess of those powers, and not authorised by ordinary law, must be inconsistent with those Acts. For as the Act defines the powers they are to exercise, those powers are thereby limited to what is expressly, or by necessary implication, conferred. And enactments trenching on general rights or delegating sub-ordinate legislative or other powers are subject to the principle of strict construction: Maxwell on Interpretation of Statutes, pages 356, 357 (2nd edition) (quoted from 27 Bombay p. 227).

A mere bonafide belief that an order might from certain points of view be desirable will not make the order legal if the person or public body issuing it had no authority or power in that behalf. *Tribhuban vs. Ahmedabad Municipality*, 27 Bombay 221, at p. 227.

**Consistent with this Act.** The by-laws framed by the Commissioners must also be consistent with this Act (see secs. 185, 195, etc.) which means consistent with the aim, scope and object of this Act as shown by its various provisions.

The words used in this Act are "consistent with this Act" and not "inconsistent with this Act" which are the words used in the Bombay Municipal Act.

"General words and phrases, however, wide and comprehensive in their literal sense, must be construed as strictly limited to the immediate objects of the Act and as not altering the general principle of law." Maxwell on Interpretation of States, page 96 (2nd edition). Nevertheless, "the effect of the rule of strict construction might almost be summed up in the remark that when an equivocal word or ambiguous sentence leaves a reasonable doubt of its meaning which the canons of interpretation fail to solve, the benefit of the doubt should be given to the subject, and against the Legislature which has failed to explain itself. But it yields to the paramount rule that every statute is to be expounded according

to the intent of them that made it, and that all cases within the mischief aimed at are held to fall within its remedial influence." Maxwell on Interpretation of Statutes, page 345 (2nd edition) quoted from p. 239 of 27 Bombay. Tribhuvan *vs.* Ahmedabad Municipality.

A by-law is a local law, and may be supplementary to the general law; it is not bad because it deals with something that is not dealt with by the general law. But it must not alter the general law by making that lawful which the general law makes unlawful or that unlawful which the general law makes lawful. Per Channel J. in *White vs. Morley* (1899) 2 Q.B. 34 at page 89, quoted in 27 Bom. at page 256. Tribhuvan *vs.* Ahmedabad Municipality.

By-laws are repugnant to or inconsistent with the Act only if they alter and thereby contradict the Act, *Ibid* at page 256.

A by-law must conform to the provisions of the law under which it purports to be made. Narain Chandra Mukherji *vs.* Cor. of Calcutta, 87 Cal. 545.

**By-laws must be reasonable.** The Commissioners have not unlimited nor uncontrolled discretion; they have no authority to do what they like irrespective of elementary justice. The by-laws must also be reasonable and the question what is a reasonable exercise of such power must depend upon the character of the body acting on the delegated authority of the Legislature, and the nature and extent of the authority given to deal with matters which concern it. As observed by Lord Russell of Killowen C. J. in *Kruse vs. Johnson*, 1898, 2 Q.B., p. 81, if the by-laws of a public representative body "were found to be partial and unequal in their operation as between different classes; if they were manifestly unjust, if they disclosed bad faith, if they involved such oppressive or gratuitous interference with the rights of those subject to them as could find no justification in the minds of reasonable men, the Court might well say: "Parliament never intended to give authority to make such rules: they are unreasonable and *ultra vires*." But it is in this sense, and in this sense only, as I conceive, that the question of unreasonableness can properly be regarded. A by-law is not unreasonable merely because particular judges may think that it goes further than is prudent or necessary or convenient or because it is not accompanied by qualification or an exception which some judges may think ought to be there. Surely it is not too much to say in these matters which directly and mainly concern the people of the country, who have the right to choose those whom they think best fitted to represent them in their local government bodies; such representatives may be trusted

to understand their own requirements better than Judges." *Tribhovan vs. Ahmedabad Municipality*, 27 Bom. 221 at pp. 249-250.

The English law as to the necessity of by-laws being reasonable is applicable to by-laws framed in the exercise of their statutory powers by Municipal Boards in India. The Municipal Board of Nainital passed a by-law under the local Act to the following effect, namely:—"No coolie, whether bearing loads or not, no servant except in attendance on his master and no prostitute shall use the Upper North Mall (one of two parallel roads running along the north side of the Nainital lake) at any time; it was held by their Lordships of the Allahabad High Court that as regards the words "no servant except in attendance on his master," this was under the circumstances an unreasonable by-law; and the Court declined to give effect to it. *Emperor vs. Bal Kishan*, 24 All. 489.

**Construction of by-laws.** The Courts can decide whether a by-law is *ultra vires* or not and if it is, declare it to be of no effect. When the by-laws reserve to the Commissioners a discretion to give or withhold consent regarding the excavation of a tank, the Courts have no power to interfere with the *bona-fide* exercise of such discretion. *Bhyrub Chandur Banerji vs. Mr. G. E. Makgill*, 17 W. R. 215.

Where a municipality passed a by-law purporting to be made under the provisions of section 313 of Bengal Act V of 1876 which was sanctioned by the Local Government, to the effect that persons failing to trim trees overhanging tanks which were likely to foul the water with their falling leaves; after service of notice on them to that effect, should be liable to a penalty, and when subsequent to the repeal of the Act by Bengal Act III of 1884 a person was convicted and fined for having disobeyed such by-law; on revision it was contended that the by-law was *ultra vires* not being warranted by the provisions of the Bengal Act V of 1876 and that even if once good it had no force after the repeal of that Act and it was held that the conviction was bad, as the by-law was not one authorised by the terms of sec. 313 and was consequently *ultra vires* and that sec. 2 of Bengal Act III of 1884 could not make valid a by-law which was originally invalid. *Beni Madhab Nag. vs. Mati Lal Das*, 21 Cal. 837.

When a municipal by-law contains disjunctive and alternative offences it is incompetent for a Magistrate to convict a person of one of such offences, when sanction has been given by the Municipality to prosecute him with another. A Municipality sanctioned the prosecution of a person for "singing with a high-sounding instrument" in violation of a by-law forbidding persons to "beat a drum or tom-tom or blow any high sounding instru-



ment. The accused was convicted for "beating a drum;" on revision held that under no circumstances could the "beating of drum" be regarded as "singing with a high-sounding instrument" and as sanction had been given by the municipality to the latter offence the conviction of the accused for the former could not stand. *Rahim and others vrs. Emperor*, 72, I.C. 894.

A by-law in restraint of trade was held bad unless there was a custom to support it, but a by-law which merely regulated trade and did not restrain it was held good. *Pierce vrs. Bartrum* (1775) 1 Cowp, p. 269 and *Everett vrs. Grapes*, 8 L.J.N.S. 669.

**Previous by-laws.** By-laws framed under the previous Municipal Acts are valid under this Act, if they had been lawfully prescribed under those Acts and are not inconsistent with this Act. Under sec. 391 by-laws under the old Act are to be deemed to have been made under this Act and by sec. 27 of B. & O. General Clauses Act (Act I of 1917) they continue in force until they are superseded by by-laws made under the new Act.

To be valid the old by-laws must be lawfully prescribed under the old Act. See *Beni Madhab Nag vrs. Mati Lal Das*, 21 Cal. 887 cited in extenso above.

There is a presumption that old by-laws were passed with due regard to the necessary procedure and were not illegal and it lay upon the accused to object to their validity. *Queen Empress vrs. Ramchand*, 19 All. 493.

**Sub-section (3).** The Local Government may rescind any rule or by-law confirmed by it, this has to be done after publication of its intention to do so and after it is done the rule or by-law will cease to have effect.

**355.** In making any by-law under this Act for the breach of which no penalty is otherwise herein provided the Commissioners may, with the sanction of the Local Government, direct that the breach thereof shall be punishable with a fine which may extend to fifty rupees, and, when the breach is a continuing one, with a further fine not exceeding five rupees for every day after the date of the first conviction during which the offender is proved to have persisted in the offence.

#### NOTES.

The section corresponds to the latter part of section 350 of B. M. Act. The penal clauses must be sanctioned, in order to be valid.

**Continuing offence**—see notes to sec. 108.

## PUBLICATION OF BY-LAWS, ORDERS AND NOTICES.

Publication of by-laws,  
orders and notices.

**356. Every by-law, order, notice, or other document directed to be published under this Act shall be written in, or translated into, the vernacular of the district, and deposited in the office of the Commissioners, and a copy shall be posted up in a conspicuous position at such office, and in such other public places as the Commissioners may direct;**

**and a public proclamation shall be made throughout such municipality by beat of drum, notifying that such copy has been so posted up, and that the original is open to inspection in the office of the Commissioners.**

## NOTES.

The section corresponds to sec. 354 of B. M. Act.

This section is imperative and it is incumbent on the Commissioners to see that it is complied with; non-compliance with it will make the whole by-laws invalid. It is the duty of the Commissioners to retain evidence of due publication so that if at any time it is alleged that the by-laws are in operative on the ground that they had not been duly published, the Commissioners can prove that in fact they had been.

A legitimate way of proving the proceedings of a municipal body in British India is "by a copy of such proceedings, certified by the legal keeper thereof, or by a printed book purporting to be published by the authority of such body." A power to make by-laws is a power to legislate. By-laws ought not to be mislaid. They ought to be collected in a form accessible to those who are governed by them. Syed Mukram Ali *vs.* The Cuttack Municipality, 17 C.W.N. 531.

## SERVICE OF NOTICES.

How notice, etc., may  
be served.

**357. Every notice, form, summons or notice of demand under this Act may be served personally on or presented to the person to whom the same is addressed;**

**or be left at his usual place of abode with some adult male member or servant of his family or be served by registered post;**

or, if it cannot be so served, presented or delivered may be put on some conspicuous part of his place of abode or of the land, building or other thing in respect of which the notice, form, summons, or notice of demand is intended to be served.

### NOTES.

The section corresponds to sec. 356 of B. M. Act.

Notices, etc., under this Act are to be served in the way as laid down in this section; these are in fact the methods of service prescribed by the Civil Procedure Code, Order V, Rules 12, 15 and 17. Service of notices, etc., under this Act on the servant is considered sufficient, but such service is not considered sufficient under Order V, Rule 15

Notifications under sec. 364 are to be posted up on or near the spot where the works are required to be executed.

Where T was recorded as the owner of the house within the Patna Municipality but the house was in fact in the occupation of his brother G, and it was shown that although the municipal taxes were always levied on T they were collected from G, held that service of a distress warrant on G was a proper service although the warrant was made out against T. Held further that it was not necessary that a distress warrant issued in the form prescribed in schedule 4 to the Bengal Municipal Act 1884, should mention a date for the return of the warrant. Government Advocate, Bihar and Orissa vrs. Ganga Prasad, 1 Patna 428 (I. L. R.)

Service of notice on owner or occupier of land.

**356. (1)** When any notice is required to be given to the owner of any land, then if the owner and his place of abode are known to the Commissioners or other authorities issuing the notice, the notice shall be—

(a) given in the manner mentioned in section 357 if such place of abode is within the limits of their authority; or

(b) served by registered post if such place of abode is not within such limits.

(2) If in any such case the owner's name or place of abode is not known, the notice may be given to the occupier of the land in the manner mentioned in section 357.

(3) When any notice is required to be given to the owner or occupier of any land, and the name of such owner and occupier is not known if

shall be sufficient to designate him as "the owner" or "the occupier" of the land in respect of which the notice is given.

### NOTES.

The section corresponds to sec. 357 of B. M. Act.

"Owner" is defined by sec. 3 (18) and "occupier" is defined by sec. 3 (15). See notes to those sections. When the name of the owner or occupier is not known the notices addressed to "the owner" or "the occupier" without any name and served on the spot are considered sufficient for the purposes of this Act.

### ENFORCEMENT REQUISITIONS.

Procedure, when owners or occupiers required to execute works by commissioners.

(1) Whenever it is provided in this Act that the Commissioners or the Commissioners at a meeting may require the owners or the occupiers, or the owners and occupiers of any land, to execute any work or to do anything within a specified time, such requisition shall be made, as far as possible, by a notice to be served on every owner or occupier who is required to execute such work or to do such thing; but if there be any doubt as to the persons who are owners or occupiers, such requisition may be made by a notice to be posted up on or near the spot at which the work is required to be executed or the thing done, requiring the owners or the occupiers, or the owners and occupiers, of any land, to execute such work or to do such thing within a specified time; and in such notice it shall not be necessary to name the owners or the occupiers.

(2) Every requisition as aforesaid, other than a requisition under section 196 or 197, shall give notice to the persons to whom it is addressed that, if they fail to comply with the requisition or to prefer an objection against such requisition as provided in the next succeeding section, the Commissioners will enter upon the land and cause the required work to be executed, or the required thing to be done; and that in such case the expenses incurred thereby will be recovered from the persons who are required in such requisition to execute such work or do such thing.

### NOTES.

The section corresponds to sec. 175 of B. M. Act.

**Power and discretion of the Commissioners.** It is a rule of construction of statutes that when the Legislature authorises the construction of a

work or the use of a particular thing for a particular purpose, the permission carries with it impliedly an exemption from responsibility for any damage arising from the use, without negligence (i.e., the neglect of some care which one is bound by law to exercise towards somebody). Where, however, trustees and official persons are authorised to execute a work, such as to raise a road, to lower a hill, or to make a drain, they are impliedly authorised, if necessary for the due execution of their task, to prejudice the rights, or to injure the property of third persons without liability for action provided they do no more than the statute under which they are acting authorises and requires them to do. Maxwell's Interpretation of Statutes, pp. 628—629 (Sixth Edition).

“ Where, as in a multitude of Acts, something is left to be done according to the discretion of the authority on whom the power of doing it is conferred, the discretion must be exercised honestly and in the spirit of the statute, otherwise the act done would not fall within the statute. “ According to his discretion ” means, it has been said, according to the rules of reason and justice, not private opinion; according to law and not humour; it is to be, not arbitrary, vague and fanciful, but legal and regular; to be exercised not capriciously but on judicial grounds and for substantial reasons. And it must be exercised within the limits to which an honest man competent to the discharge of his office ought to confine himself; that is within the limits and for the objects intended by the Legislature.” Maxwell's Int. of Statutes, pp. 228—229. (Sixth Edition).

In various sections the Legislature has confided to the municipality and to the municipality alone, the duty of deciding what measures within its legal powers are for the public convenience, and its discretion is not subject to control by the Courts. If the municipality adopts the proper procedure, no Court can review its decision. Patel Panachand Girdhar and others *vs.* The Ahmedabad Municipality, 22 Bom. 280.

The duties thrown on the Commissioners under this Act are amongst others to provide for the cleansing of public latrines and clearing away rubbish and contents of sewers and drains. They must keep the roads free of encroachments. They have control of wells, tanks and streams. The control of private premises and persons is strictly defined; they may appoint times when private persons may throw out rubbish and they must remove it.

It is a well recognised general rule that, where powers are given by the Legislature to interfere with private property, such powers must be exercised strictly and exclusively for the purposes for which they are given, and

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that, unless it can be shewn that such interference is necessary for the furtherance of those powers, it will not be permitted. Statutes which encroach on the rights of the subject, whether as regards person or property, are subject to a strict construction; they should be interpreted, if possible, so as to respect such rights. See Maxwell on Interpretation of Statutes, p. 501. (Sixth Edition).

Where an Act gives power to the Municipality or Corporation for the public benefit, a more liberal construction should be given to it than where powers are to be exercised merely for private gain or other advantage. *E. C. K. Ollivant vrs. Rahimtulla Nur Mahomed*, 12 Bom. 474.

**Procedure.** The Commissioners (which means the Chairman under this Act) or the Commissioners at a meeting can issue requisitions under this section only when they are expressly authorised by this Act to issue them. The sections by which requisitions can be made by the Chairman are secs. 192, 194, 196, 197, 228, 229, 232, 235, 236, 238, 239, 266 and 273 and those under which the requisitions can be made by the Commissioners at a meeting are secs. 240, 243, 244 and 252.

All requisitions under this section must strictly comply with the requirements laid down in the section; otherwise they will be invalid and subsequent actions taken on them will be illegal and *ultra vires*. The requisitions which the Commissioners are empowered to issue must specify the following details (1) the work to be executed or the thing to be done, (2) the time within which the thing is to be executed or done, (3) the name of the owner or occupier who is to execute the work and it is only when there is any doubt as to the persons who are the owners or occupiers that general notices designated to the owner or occupier of the holding or land on which the works are to be executed will be substituted, (4) that if the owner or occupier fails to comply with the requisition or prefer an objection against such requisition, the Commissioners shall enter upon the land and cause the work to be executed or done, (5) and that in cases where the Commissioners have to do the works the expenses incurred by them will be recovered from the person who are first required to do them and fail to do so.

**Requisitions must be lawful.** It must first be seen that the Commissioners are empowered by certain provisions of the Act to require the execution of the works or things to be done for which requisitions are issued.

Directions given in a notice under sec. 408 of the Calcutta Municipal Act to the owner of property during the pendency of litigation in respect of that property cannot be said to be lawfully given, if it is not open to the owners at that time either individually or collectively to alter the property by carry-

ing out the improvements. *Purna Chandra Baral vs. Corporation of Calcutta*, 88 Calcutta 699.

Requisitions to make an open drain in a *gully* and the drain to be constructed so as to adjoin the west wall of a building, held that the notice was *ultra vires* inasmuch as it required the accused to construct a drain adjoining a particular part of his premises. *Emperor vs. Nadir Shah H. E. Sukhia*, 29 Bombay 85.

The Commissioners must specify the time and must do so in unmistakable terms. When a definite period is appointed for the doing of some act, the day on which the order is given must be excluded, the last day of that period must be reckoned so that the period does not terminate till the beginning of the following day. See sec. 11 of B. & O. General Clauses Act (Act I of 1917).

The notice must also state that if the owner or occupier fails to comply with the requisition or prefer objection the Commissioners will enter upon the land and cause the works to be done and recover the expenses. It was held that it was imperative that notice requiring a thing to be done should contain or make mention of the second clause of the section and that no prosecution could be started on failure to comply with such a notice. In the matter of *Chairman of Puri Municipality vs. Kishorilal Sen*, 1 C.W.N. cxxliv.

In the same case it was further held that as the notice was signed by the Vice-Chairman and not by the Chairman and there being no evidence to show that there was a delegation of authority, or that his sanction was either previously or subsequently obtained, the notice was not issued under proper authority and the conviction was bad.

A notice issued by the Vice-Chairman of the Municipality in the absence of proof of delegation of powers under sec. 45 of the B. M. Act (see 25 of this Act) is invalid. *Harendra Nath Mukherji vs. Chairman of Birnagar Municipality*, 1 C.L.J. 51. See also the case of 28, C.L.J. 598 cited under sub-sec. (2).

Notices under this section are to be issued to the owners or occupiers of any holding or land and are to be served on such owners or occupiers who are required to execute the work or to do the things. In case there are any doubts as to the persons who are the owners or occupiers the requisitions are to be posted up on or near the spot at which the work is to be executed or thing done and in such cases the names of the owners or occupiers need not be given and they will be sufficient if designated to the owners or occupiers generally without specification of any names. Notice should be served on

the owners or occupiers. See *Shyam Bibi vrs. Jadab Chandra*, 2 C.L.J. 226 in this connection.

Owners defined in sec. 8 (18) and occupiers defined in sec. 8 (15).

See notes to those sections and the cases cited thereunder.

**Sub-section (2).** It is imperative that a notice requiring a thing to be done should contain or make mention of the second clause of this section, i.e., it must state that on failure of the person to comply with the requisition or prefer objections the Commissioners will enter upon the land and execute the works and recover the expenses from the defaulter. When therefore a prosecution was started upon a notice not containing or making mention of the second clause of the section it was held that no prosecution could be started on failure to comply with such a notice. In the matter of *Chairman of Puri Municipality vrs. Kissori Lal Sen*, 1 C.W.N. cxxliv. See also the other points decided in the case and the other cases cited above. See also the case of *Kanai Lal vrs. Corporation of Calcutta*, 11 C.W.N. 508 where it was held that before certain penal sections are imposed it is incumbent on the Magistrate to see that the legal procedure which is a condition precedent to any conviction is strictly and properly carried out.

Once an objection to the requisition is filed it must be heard and decided and the order of the Commissioners on it is to be explained to the person. See secs. 362 and 363.

There are two distinct stages in the preliminary procedure when an owner is required to do a certain thing by the Municipal authority there is first the initial notice under sec. 175 of the B. M. Act followed by objection, if any, on the part of the person notified and there is next the explanation or notification of the order absolute, if any, made after his objection had been heard. This procedure is by virtue of section 175 applicable in its entirety to a case under sec. 202 (sec. 198 of this Act). Proceedings before a Magistrate on applications under sec. 202 is without jurisdiction when there is a failure to observe the essential preliminary steps due to non-compliance with provisions of sections 178 and 179 (In the Bengal Act objections could be filed against requisitions under any section of the Act and there was no restricts such as laid down in the present Act against requisitions under secs. 196 and 197). *Nabin Chandra Aich vrs. Noakhali Municipality*, 23 C.J.L. 598=21, C.W.N. 470=34, I. C. 985.

A petition of objection to a notice issued by the municipality though not stamped and therefore informal should be taken notice of by the municipality and dealt with according to law. When a conviction is set aside on



the ground of invalidity of one notice there is no bar to the municipality taking proceeding under a fresh notice. *Harendra Nath Mukherji vs. Chairman, Birnagar Municipality*, 1 C.L.J. 51 (54).

Any objection taken in a petition not properly stamped is none the less an objection and should be dealt with according to law. *Jagadish Chandra Ganguly vs. Sreenath Bose*, 2 C.W.N. cxxxvii.

**Court-fee.** An application or petition when presented to any Municipal Commissioners under any Act for the time being in force for the conservancy or improvement of any place, if the petition relates solely to such conservancy or improvement, must bear a court-fee stamp of two annas. Sch. C to Bihar and Orissa Court Fees Amendment Act 1922 and Sch. II of the Court Fees Act.

Requisitions under section 196 and 197 are excepted from the operation of this sub-section and consequently from the subsequent sections; no objections can be preferred against such requisitions and they are governed by sec. 198. See notes to the section and the cases cited thereunder.

Objections by persons required to execute any work.

**380.** A person who is required by a requisition as aforesaid, other than a requisition under section 196 or 197, to execute any work or to do anything may, instead of executing the work or doing the thing required, prefer an objection in writing to the Commissioners against such requisition within five days of the service of the notice or posting up of the notice containing the requisition, or, if the time within which he is required to comply with the requisition be less than five days, then within such less time.

Except as provided in the next succeeding section such objection shall be heard and disposed of by the Chairman or Vice-Chairman.

#### NOTES

The section corresponds to sec. 176 of B. M. Act.

The time within which objections to the requisitions are to be filed is ordinarily 5 days from the date of the receipt of the requisition, but if owing to the urgency of the work to be executed the time given for complying with requisition is less than 5 days then objections should be filed within the time within which the person is directed to comply with the requisition. Requisitions under sec. 196 and 197 are excepted from the operation of this section; no objections can be preferred against such requisitions and they are governed by sec. 198. See notes to the section and the cases cited thereunder.

**Court-fee.** The petition of objection must bear a court-fee of two annas if the petition relates solely to matters of conservancy and improvement. See Schedule C to Bihar and Orissa Court-fee Amendment Act.

Only one objection can be made and once it is decided and the decision communicated, action can be taken to enforce compliance by prosecution or the Commissioners may do the work.

" No more than one petition of objection against an individual order is admissible, and when once the order has been made absolute under sec. 170 A, no subsequent petition shall be permitted to stay its execution " Para. 8 of Bengal Government Manual No. 2514 and Circular No. 31 dated October 1908, Government Circular vol. 3, page 1088.

Any objections except objections under sec. 361 are to be heard and decided by the Chairman and if the Vice-chairman is empowered under sec. 25, he may also decide them.

Procedure, if person objecting alleges that work will cost more than three hundred rupees.

**361.** If the objection alleges that the cost of executing the work or of doing the thing required will exceed three hundred rupees, such objection shall be heard and disposed of by the Commissioners at a meeting; unless the Chairman or the Vice-Chairman certifies that such cost shall not exceed three hundred rupees, in which case the objection shall be heard and disposed of by the Chairman or the Vice-Chairman;

Provided that in any case in which the Chairman or the Vice-Chairman, has certified his opinion as aforesaid, and the objection has in consequence thereof been heard and disposed of by the Chairman or Vice-Chairman, the person making the objection may, if the requisition made upon him is not withdrawn on the hearing of his objection, pay in the said sum of three hundred rupees to the Commissioners as the cost of executing the work or doing the thing required; whereupon such person shall be relieved of all further liability and obligation in respect of executing the work or doing the thing required, and in respect of paying the expenses thereof; and the Commissioners themselves shall execute such work or do such thing, and shall exercise all powers necessary therefor.

#### NOTES

The section corresponds to sec. 177 of B. M. Act.

If an objection states that the cost of executing the work or doing the things exceeds three hundred rupees, but the Chairman or Vice-chairman is of opinion and certifies that the cost will not exceed three hundred rupees; then the objection will be heard and disposed of by the Chairman or Vice-

Chairman; otherwise the objection will have to be disposed of by the Commissioners at a meeting. The person may deposit rupees three hundred only and then he will be relieved of all further liabilities for the execution of the work or doing the things required and the Commissioners shall themselves do the work and the excess expenses if any are to be paid by the Commissioners themselves.

**362. The Chairman or the Vice-Chairman, or the Commissioners at a meeting, as the case may be, shall, after hearing the objection and making any inquiry which may be deemed necessary, record an order withdrawing, modifying or making absolute the requisition against which the objection is preferred; and, if such order does not withdraw the requisition, it shall specify the time within which the requisition shall be carried out, which shall not be less than the shortest time which might have been mentioned under this Act in the original requisition.**

#### NOTES

The section corresponds to sec. 178 of B. M. Act.

This section prescribes the procedure to be observed by the Chairman or Vice-Chairman or the Commissioners at a meeting in disposing of the objections filed under sec. 360; they may make any enquiries which they consider necessary for the disposal of the objections and after the necessary enquiries they may either withdraw, modify or make absolute the requisition and make an order to that effect. If the order on the hearing of the objections modifies or makes absolute the requisition, then by the same order the time within which the work or the things to be done shall be specified in unmistakable terms and a period granted which shall be the same as that allowed by the original requisition and cannot at any event be less than the period allowed under the Act.

A prosecution under sec. 271 of B. M. Act (for disobedience of an order to remove a latrine) is not justified unless the objection is disposed of according to the terms of the law laid down under sec. 178. A person need not comply with the orders mentioned in the notice under sec. 175 if he has filed an objection. If the objection is decided in his favour the notice is cancelled. If it is decided against him he is entitled to a fresh notice and a fresh time within which to comply with the order of the municipality; and a decision under sec. 178 cannot have the retrospective effect of punishing him for the default committed by him with respect to the first notice. *Ram Paratap Lal vs. Barh Municipality*, 3 P.L.T. 801 = 1922, Pat. 188 (A.I.R.)

There are two distinct stages in the preliminary procedure when an owner is required to do a certain thing by the municipal authorities; there is first the initial notice under sec. 175 of the B. M. Act followed by objections if any, on the part of the person notified and there is next the explanation or notification of the order absolute, if any made after his objections had been heard. Proceeding before a Magistrate on application under sec. 202 B. M. Act is without jurisdiction when there is a failure to observe the essential preliminary steps due to non-compliance with the provisions of sec. 178 and 179. *Nabin Chandra Aich vs. Noakhali Municipality*, 28 C.L.J. 598=21 C.W.N. 470=84 I. C. 985.

Only one objection can be made and once it is decided and the decision communicated action can be taken to enforce compliance by prosecution or by the Commissioners doing the work.

"No more than one petition of objection against an individual order is admissible, and when once the order has been made absolute under sec. 178 no subsequent petition should be permitted to stay its execution." *Bengal Government Munl. No. 2514 and Cir. No. 81 October 1908 Govt. Cir. vol. 3, page 1088.*

Order to be explained orally. **363. If the person making such objection is present at the office of the Commissioners, the said order shall be explained to him orally; and if such order cannot be so explained, notice of such order shall be served as provided in section 357 on the person making the objection; and such explanation of, or service of, the notice of the said order shall be deemed a requisition duly made under this Act to execute the work or do the thing required.**

## NOTES

The section corresponds to sec. 179 of B. M. Act.

**Explained to him orally.** When the objector is personally present before the Chairman or the Vice-Chairman or the Commissioners at a meeting hearing the objections the order shall be explained to him then and there and if that is done no further service of the notice under this section is necessary. In such a case, however, a note should be recorded at the foot of the final order passed in each case to the following effect:—

"The order shall be carried out within      days from this date. This order has been orally explained by me to the objector who is present in person." **Sd.**

**Shall be deemed a requisition.** The order after the hearing of the objections is explained orally to the objector if present or conveyed to him by notice, and such explanation or service of notice constitute the second requisition for the execution of the works or things to be done and no further requisition is necessary.

A notice is compulsory if the municipality chooses to take the course laid down in cl. 2 of sec. 175, i.e. of entering upon the land to do the work itself. *Jagadish Chandra Ganguly vrs. Srinath Bose*, 2 C.W.N. clxxxvii.

If on the service of notice negotiations ensue which are tantamount to a request by a party served with a notice and a consent by the Commissioners to reconsider the matter, such negotiations will have the effect of waiving the notice, and it is competent to the Commissioners to issue a fresh notice after the negotiations have closed; and limitation will run from the service of the second notice. *Emperor vrs. Nadir Sha*, 29 Bombay 35.

See also the cases cited under sec. 359.

The time allowed in the notice under this section shall not be less than the shortest time which might have been mentioned in the first notice under sec. 359.

**364.** If the person or persons required to execute the work or to do the thing fails or fail, within the time specified in any requisition as aforesaid, other than a requisition under section 196 or 197, to begin to execute such work or to do such thing, and thereafter diligently to continue the same to the satisfaction of the Commissioners until it is completed, the Commissioners or any person authorized by them in that behalf, may, after giving forty-eight hours' notice of their intention by a notice to be posted up on or near the spot, enter upon the land and perform all necessary acts for the execution of the work or doing of the thing required; and the expenses thereby incurred shall be paid by the owners or by the occupiers, if such requisition was addressed to the owners or to the occupiers respectively, and by the owners and the occupiers, if such requisition was addressed to the owners and the occupiers.

Power of the Commissioners on failure of person to execute work

## NOTES

The section corresponds to sec. 180 of the B. M. Act.

The section gives to the Commissioners power to execute the work or have the things done for which requisitions were issued under sec. 359 after

observing certain formalities, if the persons on whom the requisitions were served fail to carry them out or fail to commence them or finish them promptly and diligently. A very wide discretion and a great power to interfere with private properties are given to the Commissioners by this section. If action is wanted to be taken under this section a notice that the Commissioners or any person authorised by them on that behalf intend to enter upon the premises or land and execute the work or have the things done, is necessary to be served and the duration of the notice must be 48 hours. After the expiry of the period the Commissioners or their agents may enter upon the land or premises and have the things or works done and recover the costs from the defaulter. This notice under the section is to be given after the expiry of the second notice which is issued after the disposal of objections and it is served by posting it up on or near the spot.

**Perform all necessary acts.** These words give the Commissioners a very wide discretion; they have authority to enter upon the premises and do all acts that they think necessary.

In a suit by the municipality to recover the costs incurred in cleaning a tank belonging to the defendant it was held that as to all such matters the municipality have a discretion both as to the objects upon which they should proceed and as to the manner in which they should do so. Under the law the Municipal Commissioners have authority to enter into the premises (where the tank was situated) and to do all acts that they should think necessary (as to putting it in proper order). Thus a very wide discretion was given to the Municipal Commissioners and as they had not exceeded that discretion in that case nor expended more money than was necessary in the repairs, they were granted decree for the recovery of the expenses. In the matter of Jogesh Chandra Dutta, 16 W.R. 285.

When a municipality legally proceeding under the Act decide that certain works are necessary, that conclusion in the absence of mala fides or fraud or considerations of that nature cannot be questioned by the Civil Court. *F. W. Duke vs. Rameswar Malia*, 26 Cal. 811=3 C. W. N. 508.

If the municipality adopt the proper procedure, no Court can review its decision on the ground that in the opinion of the Court the removal of the building is not likely to promote public convenience. The Legislature has confided to the municipality and the municipality alone the duty of deciding what measures within its legal power are for the public convenience and its discretion is not subject to control by Courts. *Patel Panachand Girdhar and others vs. the Ahmedabad Municipality*, 22 Bombay 280

Section 88 of the Bombay District Municipal Act (VI of 1878) gives the municipality a wide discretion to issue such orders as it thinks proper with

reference to a proposed building. Civil Courts cannot interfere with that discretion unless it is exercised in a capricious, wanton and oppressive manner. *Nagar Valah Narsi vs. Municipality of Dhandhuka*, 12 Bombay 490.

It is not the practice of the Courts to interfere with corporate bodies "unless they are manifestly abusing their powers." *Ahmedabad Municipality vs. Monilal Udainath*, 19 Bombay 212.

When an Act gives power to a municipality or a corporation for the public benefit, a more liberal construction should be given to it than where powers are to be exercised merely for private gain or other advantage. *C. K. Olivant vs. Rahimtulla Nur Muhammad and another*, 12 Bombay 424.

A municipal body is created for the purpose of sanitation and public health; carrying on any business is not its object. A power to carry on business must be construed strictly and limited to what is expressly allowed. But the case stands otherwise where the interest of health and sanitation are concerned. Then the power must be "benevolently" interpreted and supported if the terms in which the power is given justify either in express language or by necessary implication such interpretation. *Tribhuban vs. Ahmedabad Municipality*, 27 Bombay 221 at p. 259.

**Expenses thereby incurred.** Means the expenses incurred in doing all that the Commissioners think necessary.

Where the municipality re-excavated and cleaned a private tank and the owners objected to the charges and were sued for the expenses, held that Civil Courts cannot examine the charges made by the Commissioners. All that can be done is to enquire if the sums sued for had actually been expended by the Commissioners and the person or persons sued are the owners or occupiers. The mere fact that the rates charged by the municipality are higher than those which could be obtained by other persons, is no ground for interference. In the matter of *Jogesh Chandra Dutt*, 16 W.R. 285.

The expenses so incurred would be realised from the owner or occupier or both according to the person or persons on whom the requisition was issued. The expenses are to be realised by distress warrants or suits as provided in secs. 128 to 130. See sec. 368. In the case of tanks or pools, when the Commissioners make any re-excavations, etc., they may retain possession of the tank or pool and turn the same to profitable account until the expenses incurred have been realised. See sec. 372. So also in the case of unoccupied premises when any repairs have been made by the Commissioners they may retain possession until the sum expended is paid to them. See sec. 371.

The pendency of a civil action by a person who contests his liability will not bar the realisation of the expenses by distress. See sec. 378 proviso.

Apportionment of expenses among owners,

**363.** Whenever any expenses incurred by the Commissioners are to be paid by the owners or by the occupiers of any land as provided in the last preceding section, the Commissioners may, if there be more than one owner or more than one occupier, as the case may be, apportion the said expenses among such of the owners, or among such of the occupiers as are known, in such manner as to the Commissioners may seem fit.

#### NOTES

The section corresponds to sec. 181 of the B. M. Act.

" Owner " is defined in sec. 8 (18) and " occupier " is defined in sec. 8 (15). See notes to the sections.

Apportionment among owners and occupiers.

**366.** Whenever any expenses incurred by the Commissioners are to be paid by the owners and occupiers of any land, as provided in section 364, the Commissioners may apportion the said expenses among the said owners and occupiers, or such of them as are known, in such manner as to the Commissioners may seem fit.

#### NOTES

The section corresponds to sec. 182 of the B. M. Act.

Section 365 relates to apportionment of expenses between the owners or the occupiers when there are many and this section relates to apportionment between the owners and the occupiers. " Owner " defined in sec. 8 (15) and " occupier " defined in sec. 8 (18) see notes thereto.

Recovery by occupier of cost of works executed at his expense.

**367.** Whenever any works or any alterations and improvements of which the Commissioners are authorized by this Act to require the execution are executed by the occupier on the requisition of the Commissioners, or are executed by the Commissioners and the cost thereof is recovered from the occupier, the cost thereof may, if the Commissioners certify that such cost ought to be borne by the owner, be deducted by such occupier from the next and following payments of his rent due or becoming due to such owner, or may be recovered by him in any court of competent jurisdiction,



## NOTES

The section corresponds to section 188 of B. M. Act.

## RECOVERY OF COSTS AND EXPENSES.

**388.** All costs, expenses, rents, fees, or other moneys due under this Act to the Commissioners of any municipality may be recovered in the manner provided in sections 123 to 130.

## NOTES

The section corresponds to section 360 of B. M. Act.

Sections 123 to 129 prescribe the procedure for recovery of taxes by distress and sale and section 130 lays down that Commissioners may bring suits instead of distraining or on failure of distress. This section lays down the same procedure, i.e., distress and sale, or suit for realisation of all costs, expenses, rents, fees or other monies due under the Act.

Rule 9 of Sch. I of the Public Demands Recovery Act IV of 1914 (B. & O.) lays down that "any money payable to a Government Officer or any local authority, in respect of which the person liable to pay the same has agreed by a written instrument duly registered, that it shall be recoverable as a public demand," than the Commissioners can realise according to the Act. In the case of leasing out ferries, tolls or pounds if there is a written registered instrument and the person liable has agreed to it, the Commissioners can proceed under the Public Demands Act (IV of 1914).

**Dues under this Act.** The costs, etc., realisable under this section must be for acts done by the Commissioners under some provisions of this Act; monies due to the Commissioners on a contract cannot be so realised.

A person who had obtained a contract to collect a certain tax imposed by a District Municipality having failed to pay over the money due under the contract at the stipulated time was convicted by a Magistrate under section 84 of the Bombay District Municipal Act (Bom. Act VI of 1873 which provided for realisation of the amounts after conviction) and ordered to pay it to the municipality with interest and also to pay a fine and court fee charges, it was held on reversing the conviction that the section did not apply, sums due under a contract do not come within any of the matters provided for by section 84. In re Jagu Santram, 22 Bom. 709.

In a case under a similar section of the Madras Act which provided for realisation of the amounts after conviction before a Magistrate it was held that money due under a contract entered into with a municipality for the right to collect tolls in consideration of a money payment did not fall within any of the provisions of the Municipal Act (Madras Act III of 1897) and the

summary procedure for its realisation was not applicable to such a case: *Abdul-Azeez Sahib vs. Cuddapah Municipality*, 26 Mad. 475.

Power to sell un-  
claimed holdings for  
money due.

**369. (1)** If money be due under this Act in respect of any holding from the owner thereof, on account of any tax, expenses or charges recoverable under this Act, and if the owner of such holding is unknown or the ownership thereof is disputed, the Commissioners may publish twice, at an interval of three months, a notification of sale of such holding, and after the expiry of not less than three months from the date of the last publication, unless the amount recoverable be paid, may sell such holding to the highest bidder, who shall, at the time of sale, deposit the full amount of the purchase money.

**(2)** After deducting the amount due to the Commissioners as aforesaid, the surplus sale-proceeds (if any) shall be credited to the municipal fund, and may be paid on demand to any person who establishes his right to the satisfaction of such Commissioners or in a Court of competent jurisdiction.

**(3)** Any person may pay the amount due at any time before the completion of the sale, and may recover such amount by a suit in a court of competent jurisdiction from any person beneficially interested in such property.

#### NOTES

The section corresponds to sec. 361 of B. M. Act.

Government has ruled that municipalities may themselves buy a holding put up to sale under this section provided it is required for the purposes of this Act. Order (Munl.) No. 2250 of 6th August, 1901.

The purchaser of a holding sold under this section does not acquire it from incumbrances, there being no provision in the Act creating any charge or other preferential right. *Muhammad Soleman vs. Raghunath Dutt*, 21 C. W. N. 425.

**370. (1)** The materials of anything which shall have been pulled down or removed by the Commissioners under the provisions of section 359, sub-section (2) and section 194 may be sold by the Commissioners, and the proceeds of such sale may be applied, so far as the same will extend, to the payment of the expenses incurred.

**(2)** The surplus sale-proceeds (if any) shall be credited to the municipal fund, and may be paid on demand to any person who

establishes his right to the satisfaction of the Commissioners or in a court of competent jurisdiction.

#### NOTES

The section corresponds to sec. 212 of B. M. Act.

**371.** If the Commissioners have under the provisions of this Act caused any repairs to be made to any house or other structure, and if such house or other structure be unoccupied, the Commissioners may enter upon possession of the same, and may retain possession thereof until the sum expended by them on the repairs be paid to them.

Power to enter upon possession of houses repaired

#### NOTES

The section corresponds to sec. 211 of B. M. Act.

The section only applies when the Commissioners have made any repairs to any house or other structure and they can take possession if it is unoccupied. The Commissioners may also recover the expenses by distress warrant or by civil suit.

Power to retain possession of tank or pool till expenses of re-excavation etc., are realized.

**372.** If under section 228 read with sub-section (2) of section 359, the Commissioners execute the work of re-excavating or filling up a tank or pool, they may retain possession of the tank or pool, or of the site thereof and turn the same to profitable account until the expenses thereby incurred have been realized.

#### NOTES

The section corresponds to sec. 200 (2) of B. M. Act.

If the owner or occupier fails to comply with a requisition to cleanse, repair, re-excavate, fill up or drain off a private tank or pool the Commissioners can prosecute him under sec. 228 (2) and can themselves proceed to do the work under sec. 364; in the latter case this section gives them an alternative remedy to sec. 368; instead of realising the expenses by distress or sale they can take possession of the tank or pool and keep it in their possession till the expenses incurred have been realised from its income.

#### APPEALS.

Appeals from certain order of the Commissioners.

**373. (1)** Any person aggrieved by any prohibition, notice or order made by the Commissioners under the powers conferred upon them by section 166 (1), 169, 170, 173 (5), 183 (1), 193, 196 (1), 197, 236, 252, 260 or 273 (2) may within thirty days from the date of such prohibition, notice

or order, appeal to the Commissioners, and every such appeal shall be heard and determined by not less than three Commissioners, who shall be appointed in that behalf by the Commissioners at a meeting, and no such prohibition, notice or order shall be liable to be called in question otherwise than by such appeal.

(2) The appellate authority may, for sufficient cause, extend the period allowed by sub-section (1) of this section for appeal.

(3) The order of the appellate authority confirming, setting aside or modifying the prohibition, notice or order appealed from shall be final:

Provided that the prohibition, notice or order shall not be modified or set aside until the appellant and the Commissioners have had reasonable opportunity of being heard.

#### NOTES

The section corresponds to sec. 242A of the B. M. Act.

The petition of appeal will be subject to two annas court-fees under Article 1 (a) Schedule II of the Court-fees Act as amended by B. & O. Act I of 1922. The period of filing appeal under this section is one month from the date of the order, notice or prohibition which may be extended for sufficient cause by the appellate authority. The section takes away the power of questioning the prohibition, notice or order otherwise than by filing such appeal. Appeals lie against orders under:—

Sec. 166 (1) which relates to grant of sanction for construction of road either absolutely or subject to conditions.

Sec. 169 which relates to alteration of unsanctioned road and demolition of buildings thereon.

Sec. 170 which relates to levelling, paving, metalling, flagging, etc. of a road not being a public road.

Sec. 178 (6) which relates to alteration or demolition of buildings projecting beyond the regular line of the road.

Sec. 188 (1) which relates to refusing sanction of building either absolutely or subject to conditions.

Sec. 193 which relates to stopping erection of building constructed without sanction.

Sec. 198 (1) which relates to removal of obstructions and encroachment on roads, house-gullies or other properties of the Commissioners.

Sec. 197 which relates to removal of projections on houses encroaching on roads, house-gullies and other properties of the Commissioners.

Sec. 236 which relates to prohibition from letting a house for occupation which is unstable or the drainage or latrine accommodation of which is defective until its stability is secured or the defects in drainage is removed.

Sec. 252 which relates to the closing of certain burial or burning grounds.

Sec. 260 which relates to the prohibition against future use of a place for carrying on dangerous and offensive trades.

Sec. 272 (2) which relates to the licensing of a market or shops lawfully established and cancellation, suspension or refusal of license for markets and shops for sale of certain articles.

No such order shall be called in question otherwise than by such an appeal. The section lays down the procedure for questioning the prohibition, notice or order of the Commissioners under the various sections specified. The procedure is by way of appeal to the Commissioners, which shall be disposed of by a Committee of not less than 3 Commissioners and this is the only way of challenging or questioning them. See also secs. 117 and 119 and notes thereto.

On an interpretation of a similar section of the U. P. Act it was held that when a Municipal Board refused permission to erect or re-erect a building, the proper way to contest such refusal was to appeal in the manner provided for by sec. 162 of the United Provinces Municipal Act 1900 which further provided that save by such appeal the order of the Municipal Board shall not be liable to be called in question. It is quite clear therefore that the remedy of the plaintiff was by way of an appeal and he was not entitled to maintain a suit for injunction to restrain the Board from interfering with his building. *Abdus Samad vrs. The Chairman, Municipal Board, Meerut*, 36 Allahabad 829.

A person aggrieved by an order under sec. 241 (3) of B. M. Act must exhaust the statutory remedy provided in sec. 242A of the Act before going to the Civil Court for redress. *Chairman of Gaya Municipality vrs. Sukan Singh*, 37, I. C. 854.

The notice, order or prohibition must be a legal one and must be such as the Commissioners can lawfully issue under the powers conferred upon them by this Act. It was so held in a Burma case the language of sec. 147 of which Act (Burma Act III of 1902) is the same as the present one. The words should not be interpreted as preventing an accused from challenging an order as *ultra vires* by way of defence to a criminal charge. *Bretto vrs. Rangoon Municipal Commissioners*, 7 Cr. L. J. 441-4, L.P.B. 144.

It was held on an interpretation of a similar section of the U. P. Municipal Act (Act I of 1900) where a written notice was served on a person to pull down a *chhajja* and *do-mansila* and he did not do so and he was charged under sec. 147 of the Act. He admitted the receipt of the notice but stated that he had not constructed any building without permission, but that he had made only ordinary repairs. The trial Court held that no offence had been proved and discharged him. The District Magistrate moved the High Court against the acquittal suggesting that the validity of the notice issued by the Board was one which could only be questioned under sec. 152 of the Act and that not having been so questioned, it was not open to the accused to attack its validity in a criminal Court in defence to a charge under sec. 147. It was held that before any one can be convicted of an offence under this section the Court must be satisfied that what he had disobeyed was a notice lawfully issued by the Board under the powers conferred upon it by the Act. *Emperor vs. Peary Lal*, 86 Allahabad 185. See also *Chhote vs. Municipal Board of Lucknow*, 3 Cr. L. J. 205 = 9 O.C. 29.

**Sub-section (2).** The time for filing an appeal under sub-sec. (1) may be extended by the appeal Committee; what will be considered as sufficient cause will be matters for the Committee to decide.

**Sub-section (3).** The order in appeal of the Appeal Committee shall be final. See sec. 119 and notes thereto and see also notes to sub-sec. (1).

A person aggrieved by an order under sec. 241 (3) of B. M. Act must exhaust the statutory remedy provided in sec. 242A of the Act before going to the Civil Court for redress. *Chairman of Gaya Municipality vs. Sukan Singh*, 87 I. C. 854.

**When a Civil Suit will lie.** The question before the Civil Court will be whether the action of the Commissioners complained of is or is not within the powers conferred upon them by this Act, *i.e.*, whether that action is *ultra vires*; and the Courts can interfere in all matters in which a municipality acts *ultra vires*. *Kameshwar Prasad vs. Chairman of Bhabua Municipality*, 27 Cal. 849. See also *Chairman, Municipal Board, Chapra vs. Basudev Narain Sing*, 87 Cal. 874 and *Nabadwip Chandra Pal vs. Purna Nanda Saha*, 3 C. W. N. 78; and the various cases cited under section 119.

**Proviso.** The Commissioners in disposing of the appeals and in cases where they want to modify or set aside the prohibition, notice or order must give notice to the Commissioners. The procedure for filing appeals is this, they are filed in the Municipal Office and then a body of Commissioners are

appointed for disposing of them and the appeals are disposed of on the materials on the municipal records in the presence of the municipal officers and this involves in itself the giving of notice to the Commissioners; a separate notice to the Commissioners is seldom given.

This proviso seems to make the service of notice on the Commissioners, when the order is to be modified or set aside, imperative. Modification or setting aside of the notice, order or prohibition without service of any notice on the Commissioners, will not invalidate the judgment in appeal of the Commissioners, as the non-service of notice cannot be said to make their decision illegal or not final.

#### PROSECUTIONS.

Power of Commissioners to direct prosecution for public nuisance, etc.

**374. The Commissioners may direct any prosecution for any public nuisance, and may order proceedings to be taken for the recovery of any penalties under this Act, and for the punishment of any persons offending against the same, and may order the expenses of such prosecution or other proceedings to be paid out of the municipal fund.**

#### NOTES

The section corresponds to section 352 of B. M. Act.

**Powers of Commissioners to prosecute.** This section empowers the Commissioners to direct prosecutions (1) for public nuisances, (2) for recovery of any penalties under this Act and (3) for offences against or under this Act.

"Public nuisance" is not defined in this Act but is defined in Sec. 268 of the Indian Penal Code which runs thus: "A person is guilty of public nuisance who does any act, or is guilty of any illegal omission which causes any common injury, danger or annoyance to the public or to the people in general who dwell or occupy property in the vicinity or which must necessarily cause injury, obstruction, danger or annoyance to persons who may have occasion to use any public right."

A public nuisance is one that affects the King's subjects at large or a considerable portion of them, such as the inhabitants of a town. A private nuisance on the other hand is one that affects only one person or a certain determinate number of persons and is only amenable to civil law. Nuisance under the Calcutta Municipal Act means any nuisance as defined in sec. 3 (29) thereof. The definition though wider than that of a public nuisance at the common law does not extend to the inclusion of all private nuisances. *Khagendra Nath Mitter vs. Bhupendra Narayan Dutt*, 88 Calcutta 296.

No length of enjoyment can legalise a public nuisance. *Municipal Corporation of Calcutta vrs. Mahomed Ali*, 7 B.L.R. 490 and *Priyanath Dey and others vrs. Gobardhan Malo*, 25 Calcutta 278.

**Offence under this Act.** The Municipal Act is intended to be complete in itself as regards offences committed against the Municipal Commissioners and as there are no such words in the Act as are necessary to make the provisions of the Penal Code applicable to offences under the Municipal Act, there is no indication of any intention to make a delinquent under this Act liable also to punishment under that Code. The powers, which the Municipal Commissioners have to institute prosecutions under this Act, are defined by this section; they can only institute prosecutions for public nuisances which are offences under the Penal Code and this Act and not for any other offence under the Penal Code. They could not institute a prosecution under the Penal Code against a man on a charge of making a false statement regarding the number of ponies for which he had taken out a license under sec. 138 of the B. M. Act (sec. 140 of this Act). The Municipal Commissioners have in such a case a remedy provided by the Act itself and they are not entitled to go beyond it. *Chandi Prasad vrs. Abdur Rahaman*, 22 Calcutta 181.

Sec. 80 of the Bihar & Orissa General Clauses Act (Act I of 1917) is applicable to prosecutions under this Act. "Where an act or omission constitutes an offence under two or more enactments, the offender shall be liable to be prosecuted and punished under either or any of those enactments, but shall not be liable to be punished twice for the same offence" and a man may be prosecuted under this section or under the Penal Code or both but cannot be punished twice.

"But the Commissioners as such have no doubt power to prosecute their servants for embezzlement of public money under the Penal Code, and to prosecute for 'public nuisances' hereunder." Justice Par-giter's B. M. Act, page 885.

The erection of an unauthorised structure is not an offence within the meaning of the Code of Criminal Procedure. So long as there is no disobedience to an order of demolition no offence is committed. A party to a proceeding under section 363 of the Cal. Munl. Act, is not an accused and is not exempt from administration of oath. *Krishen Doyal Jalan vrs. The Cor. of Calcutta*, 81, C. W. N. 506.

**Cost of prosecution.** Costs of litigation can also be met out of the municipal fund. See notes to sec. 68 (xxvi).



A complaint by a municipal officer is exempt from stamp duty. Sec. 19 (18) Court-fees Act (Act VII of 1870).

**375.** No prosecution for an offence under this Act or any by-law made in pursuance thereof shall be instituted without the order or consent of the Commissioners, and no such prosecution shall be instituted except within six months next after the commission of such offence unless the offence is continuous in its nature, in which case a prosecution may be instituted within six months of the date on which the commission or existence of the offence was first brought to the notice of the Chairman of the municipality:

Provided that the failure to take out any licence under this Act shall be deemed to be a continuing offence until the expiration of the period for which such licence is required to be taken out.

#### NOTES

The section corresponds to sec. 358 of the B. M. Act.

**Court-fees and Process-fees.** Petitions of complaint filed by a municipal officer is exempt from stamp duty. Sec. 19 (18) of the Court-fees Act.

As no court-fee is payable on a complaint by a municipal officer, if court-fee has been realised from such an officer illegally the accused should not be burdened with the court-fee under sec. 81 of the Court-fees Act *Queen-Empress vs. Khaja Bhoy*, 16 Madras 428.

But in cases of convictions the process fee paid by such complainant shall be ordered to be repaid by the accused in addition to the penalty imposed upon him by sec. 81 (8) of the Court-fees Act. The duty of the Magistrate to order payment of court-fees and process-fees under sec. 81 of the Court-fees Act in addition to the penalty is imperative whereas under sec 545 of the Criminal Procedure Code he has a discretion to award the expenses of the prosecution or refuse to do so out of the fine levied from the accused. *Queen Empress vs. Yamana Rao*, 24 Madras 805.

**Offences under this Act.** See notes to sec. 874.

The powers conferred on the Commissioners by this section are restricted to prosecutions for offences under this Act or by-laws framed under it. So when the Chairman ordered a prosecution under sec. 199 of the India Penal Code the High Court held that the Commissioners had no power to institute such a prosecution. *Chandi Prasad vs. Abdul Bahaman*, 22 Calcutta 181 (see the same case cited in extenso under sec. 374).

~~Sanction for prosecution.~~ In a Full Bench reference, on an interpretation of sec. 69 of the N.-W. P. and Oudh Municipalities Act (Act XV of 1884) the wording of which is similar to the present section, it was held that the object of the section was to exclude prosecutions for what may be called municipal offences from the interference of irresponsible persons and to secure that such prosecutions should have the guarantee of the responsibility of the Municipal Board. A further object was to relieve the Municipal Board of the necessity of itself dealing with each individual case of prosecution for a municipal offence, and to enable it to assign that particular function to some other person or persons. *M. J. Powell vrs. The Municipal Board of Mussorie*, 22 All. 123 (F. B.)

The section requires two things (1) the Commissioners' order or consent and, (2) the prosecution must be instituted accordingly. The institution would be made by some person on their behalf because being a corporate body the only way in which it can make a complaint is to authorise some person to make one on its behalf, just as it can only do any other act through the instrumentality of some agent. *M. J. Powell vrs. The Municipal Board of Mussorie*, 22 All. 123 (F. B.)

**Consent of the Commissioners.** The prosecution is to be started on the order or consent of the commissioners. The Commissioners mean the Chairman (vide sec. 24) or the Vice-Chairman or any other Commissioner when such powers are delegated to him by the Chairman with the approval of the Commissioners at a meeting (vide sec. 25). See notes to secs. 24 & 25 in this connection.

The only evidence of sanction to prosecute of a public authority is a writing under the seal and signature of that authority. *Rasul Bukhsh vrs. Municipal Board of Chapra*, 16 C. W. N. 984. It has been subsequently held in a case that there was no legislative enactment which required a sanction for prosecution to be under seal and the affixing of a seal to such sanction is not necessary. Simply signing the order for prosecution or consent in writing to the prosecution by the Chairman as representing the Commissioners was sufficient for the purposes of section 358. *Chairman of Hooghly-Chinsura Municipality vrs. Kristo Lal Mallik*, 20 C. W. N. 824-24, C.L.J. 57

A prosecution by a municipality for an offence under the Bengal Municipal Act started on the complaint of one of its servants is initiated under section 190 (1) (a) and not under sec. 190 (1) (c) and the procedure prescribed under section 191 does not apply to it. The delegation of powers by a Chairman to a Vice-Chairman under section 45 of the Bengal Municipal

Act does not terminate on the officer delegating ceasing to hold office, but continues until it is withdrawn by his successor. A sanction therefore granted for a prosecution under the Act by a previous Chairman which has not been expressly withdrawn is valid and operative. *Baldoe Lal vs. Emperor through Gaya Municipality*, 38 I. C. 805.

**Offence is continuous in its nature.** When an offence is repeated, every successive infringement is an offence.

The failure to comply with a requisition within the period appointed is one offence and the continued default is a separate offence.

For the procedure for prosecution in the case of continuing offence. See sec. 108 and notes thereto.

**Limitation.** The period of limitation for a prosecution under this section is six months. Under the old Municipal Act the period of limitation was three months which was changed to six months by Bengal Act IV of 1894 and the same period is continued in this Act.

Where a period is fixed for compliance with an order under this Act and non-compliance within that period is made an offence the day on which the order is given must be excluded, and the last day of that period must be fully reckoned, so that the period does not terminate till the beginning of the following day. See Sec. 11 of the B. & O. General Clauses Act (Act I of 1917).

When an order under sec. 449 of the Calcutta Municipal Act was made on the 8th September for demolishing a building within 3 months, the primary offence of non-compliance with that order was complete on the 8th December. After that every day's default in carrying out the order became a distinct offence under sec. 580. Consequently where summons were issued against the offender for such continuing offence on the 6th of May following, on a complaint made on the 10th of March, the prosecution could not be regarded as barred by limitation under sec. 681 of that Act. *Noni Lal Sett vs. Corporation of Calcutta*, 7 C. W. N. 858.

Section 358 of the Bengal Act bars all prosecution under this Act or under any by-law made in pursuance thereof unless they are instituted within 6 months next after the commission of such offence or within 6 months of the date when such commission of the offence is brought to the knowledge of the Chairman. See *Bidhu Bhushan Mallik vs. The Asansol Municipality*, 6 C. W. N. 167.

Where on a notice being served by the Municipal Commissioners of Bombay if negotiations ensue which are tantamount to a request by the

party served with the notice and a consent by the Commissioners to reconsider the matter, such negotiations will have the effect of waiving the notice and it is competent to the Commissioners to issue a fresh notice after the negotiations have closed. Limitation in this event will not run from the original notice. *Emperor vrs. Nadir Sha*, 29 Bombay 85.

See also 11 C. W. N. 109 as to the construction of the law of limitation.

When a notice under sec. 406 of the Calcutta Municipal Act was served on the 3rd March, 1906 directing certain improvements to be made within 3 months from its date, but the owner failed to comply with it and served a notice under sec. 419 of the Act on the 2nd July whereupon the Corporation gave her further time till the 2nd January, 1907 and instituted a complaint on the 28rd January for non-compliance with the terms of the notice of the 3rd March, 1906, it was held that the 3 months having expired on the 2nd June, 1906, the offence was committed on the next day and the prosecution was therefore barred under sec. 631 (which corresponds to the present section) and the notice under sec. 419 and the extension of time by the Corporation both being after the date of the offence were ineffectual in extending the period of limitation. *Kumud Kumari Dasi vrs. Corporation of Calcutta*, 84 Calcutta 909.

See 631 (which corresponds to the present section) of the Calcutta Municipal Act applies only to criminal prosecutions for non-compliance with requisitions in the regular way i.e., on complaints as defined in sec. 4 of the Criminal Procedure Code. But it does not apply to a proceeding taken by the Magistrate for an enforcement of the requisition. *Sarat Chandra Mukherji vrs. Corporation of Calcutta*, 37 Calcutta 884=14, C. W. N. 501.

Proceedings before a Magistrate are judicial. See secs. 198 & 201 and notes thereto.

A prosecution under sec. 218 of the B. M. Act (same as sec. 174 (2) of this Act) for failure to comply with a requisition under sec. 202 (secs. 196 and 197) and 203 (secs. 196 & 199) is within time if instituted with six months from the expiry of the time allowed for compliance with the order under the latter section. *Golam Rasul vrs. King-Emperor*, 6 P.L.J. 174.

Sec. 537 of the Calcutta Municipal Act has not affected or abrogated sec. 248 of the Code of Criminal Procedure so far as cases or proceedings started by the Corporation are concerned. Sec. 537 is merely an enabling section and the power given thereunder can only be exercised according to the Code of Criminal Procedure. No absolute power of withdrawal is given to the Corporation under sec. 537 and before a withdrawal can be permitted there must be sufficient grounds to the satisfaction of the Magistrate who

can in his discretion reject an application for withdrawal filed by the Corporation. *Sisir Kumar Mitter vs. Corporation of Calcutta*, 80 C. W. N. 598.

**278. (1)** All police officers shall give immediate information to the Commissioners of the Municipality of any offence committed against this Act or any by-law made in pursuance thereof.

Police officer to report offences and arrest persons refusing to give name and residence.

(2) When any person, in the presence of a police officer, commits, or is accused of committing, any such offence, and refuses, on demand of a police officer, to give his name and residence, or gives a name or residence which such officer has reason to believe to be false, he may be arrested by such officer in order that his name or residence may be ascertained; and he shall within twenty-four hours from the arrest, be forwarded to the nearest Magistrate, unless before the expiration of that time his true name and residence are ascertained, in which case he shall be released on his executing a bond for his appearance before a Magistrate, if so required.

(3) Upon the recommendation of the Commissioners any servant of the Commissioners in receipt of a salary of not less than ten rupees per mensem, when empowered on that behalf by a general or special order of the District Magistrate, may exercise the powers of a police officer under this section.

#### NOTES

The section corresponds to sec. 365 of B. M. Act.

Under this section all police officers are bound to give immediate information to the Commissioners of the commission of any offences against this Act or by-laws framed under it. The procedure in sub-sec. (2) is based on sec. 57 of the Criminal Procedure Code which relates to non-cognisable offences and the powers of the police officers in such cases. As most of the offences against this Act or by-laws under it are non-cognisable the provisions made applicable by sub-sec. (2) are those of non-cognisable cases.

The report made by an Overseer of a Municipality who is empowered by sec. 365 of B. M. Act to exercise the powers of a police officer in respect of a non-cognisable offence committed in exposing for sale jack fruits on a municipal road, was not a police report within the meaning of sec. 190 (c) of Cr. P. Code but a complaint under sec. 4 (h) and his examination under sec. 200 was not a mere formality and non-examination vitiated the entire proceeding. *Mangu Koeri vs. King-Emperor*, 1 P. L. T. 546.

## SUITS.

Notice of suits against Commissioners.

**377. (1) No suits shall be brought against the Commissioners of any municipality, or any of their officers, or any person acting under their direction, for anything done under this Act, until the expiration of one month next after notice in writing has been delivered or left at the office of such Commissioners, and also (if the suit is intended to be brought against any officer of the said Commissioners or any person acting under their direction) at the place of abode of the person against whom such suit is threatened to be brought, stating the cause of suit and the name and place of abode of the person who intends to bring the suit;**

**and unless such notice be proved, the court shall find for the defendant.**

**(2) Every such action shall be commenced within three months next after the accrual of the cause of action, and not afterwards.**

**(3) If the Commissioners or their officer, or any person to whom any such notice is given, shall, before suit is brought, tender sufficient amends to the plaintiff, such plaintiff shall not recover.**

## NOTES

The section corresponds to section 363 of B. M. Act.

**Object of the section.** "The object of the section is to protect Municipal Commissioners and their officers against being sued on account of what they may do under this Act, to protect them from the consequences of committing acts which they intended to do under their statutory authority, but which through some mistake are not justified by the terms and cannot be defended by the provisions of the statute. *Selmes vrs. Judge* (1871) L. R. 6 Q. B., p. 727." J. Pargiter's B. M. Act, p. 343.

The section gives the Commissioners protection against being sued, in the manner provided herein and it lays down that the case shall be instituted promptly, and the plaintiff must institute his suit within three months from the date of the act complained of and he shall give the Commissioners one month's notice before he institutes the suit during which interval they can consider his case and settle it amicably under section 68 (xxii) if they think proper.

"The section debars a plaintiff from the full rights of suit which he would have ordinarily and the Courts have construed it somewhat strictly so as not to extend its operation to anything which does not come manifest-

ly within its words. The nature and real object of the suit therefore must be looked at in order to determine whether it comes within this section or not." J. Pargiter's B. M. Act, page 844. See in this connection 89 Bom. 600 and 48 Cal. 45 cited in extenso lower down.

**Anything done under this Act.** The expression " anything done in pursuance of the Act " used in the Act of Parliament (The Turn Pike Act) means that the thing done should be done by the defendant acting *colore officii*; if he did so act, he is within the protection of the Act of Parliament." Per J. Bayley in *Waterhouse vrs. Keen* (1825) 4 B. & C. 200 quoted from 48 Cal., p. 50.

The protection of a Statute extended to everything done *bona fide* under the colour of the provisions of the statute; in other words if a person knows that he has not under a statute authority to do a certain thing and yet intentionally does that thing, he cannot shelter himself by pretending that the thing was done with the intent to carry out that statute. Per Fry L. J. in *Mitland Railway Company vrs. Withington Local Board* (1888), 11 Q.B.B. 788 quoted from 48 Calcutta p. 51.

The substance of the matter is that an act is to be regarded as done in pursuance of a statute if the doer had a reasonable and *bona fide* belief that he was so acting: *Hazeldine vrs. Grove* (1842), 8 Q. B. 997.

If a party bonafide and not absurdly believe that he is acting in pursuance of a statute and according to law he is entitled to the special protection which the Legislature intended for him, although he has done an illegal act. Per Lord Campbell in *Richard Spooner vrs. Juddow*, (1850) 4 Moo. 1. Appeals 858.

The words " anything done under the Act " in the section include omissions. Where the words in a statute used in connection with an offence or a civil wrong refers to acts done they must be held to extend also to illegal omissions. Sec. 4 (2) of the B. & O. General Clauses Act also lays down that " words which refer to acts done shall extend also to illegal omissions." *Allan Mathewson vrs. Chairman of the District Board of Manbhum*, 5 P. L. J. 859-1, P. L.T. 269.

Sec. 87 of the Bengal Act (III of 1864 which corresponds to the present section) was held to apply only in those cases where the plaintiff claimed damages or compensation for some wrongful act committed by the Commissioners or their officers in the exercise or honestly supposed exercise of their statutory powers. *Chandra Sekhar Bandopadhaya vrs. Obhoy Churn Bagchi*, 6 Calcutta, 8 (F. B.)=8 I. C. 6.

There is no difference between section 87 of Act III of 1864 B. C. and sec. 202 of the Bengal Municipal Act. As the former section so also the latter is only applicable in those cases where the plaintiff claims damages or compensation for some wrongful act committed by the Commissioners or their officers in the exercise or the honestly supposed exercise of their statutory powers. In cases other than these sec. 368 has no application. *Sudhansu Bhushan Roy Chowdhury vrs. Bijoy Kali Roy Chowdhury*, 8 C. L. J. 376.

See also the case *In re Bishnupada Chatterji*, 8 C. L. J. 36n. Where the municipality removed a wall under the orders of a Magistrate on failure of the plaintiff to comply with a notice issued under sec. 202 B. M. Act and the plaintiff sued the municipality for damages for unlawful removal of the wall; it was held that sec. 368 applied to a suit for damages for an act which purported to have been done under sec. 202, when there was nothing to show that the proceedings had not been taken *bona fide*.

Where the officers of a municipality act maliciously and without reasonable or probable cause the special limitation provided in sec. 368 of the B. M. Act is inapplicable; the provisions of the said Act are applicable to acts done in good faith. *Shyam Bibi vrs. Chairman of Baranagore Municipality*, 12 C. L. J. 410.

A member of a Municipal Board as such member made a report to the Board which resulted in the prosecution of a certain persons for a municipal offence. The persons prosecuted were acquitted and thereafter they filed a suit for damages for malicious prosecution against the maker of the report. It was held that defendant was entitled to the notice provided by sec. 49 of the Municipal Act (Act I of 1900 United Provinces Municipal Act). *Jugal Kishore and another vrs. Jugal Kihore*, 88 Allahabad, 540. See also *Bhaktawar Mull vrs. Abdul Latif*, 29 Allahabad 567 in this connection.

Where a District Municipality exercising the powers, given to it by the District Municipal Act (Bombay Act III of 1901), of the statutory rules made under the Act dismisses an officer of the municipality; that is an act done or purporting to have been done in pursuance of the Act within the meaning of sec 167; and a suit for damages for wrongful dismissal from service was held to be barred as not brought within 6 months from the date of the act complained of (6 months being the period fixed by the Bombay Act for filing suits). *The Municipality of Ratnagiri vrs. Basudeo Balkrishna Lotlikar*, 39 Bombay 600.

But a suit for arrears of pay was held to be a suit for breach of contract and not for anything done under the Act. Sec. 368 has no application to a



suit against the Chairman of a Municipality by an inspecting *pundit* of *path-shalas* or primary schools under the municipality to recover his pay. *Panchanan Chatterji vrs. Santosh Kumar Bose, Chairman, Burdwan Municipality*, 65 I. C. 105.

In a suit for damages against the Vice-Chairman of a municipality for having issued a warrant wrongfully; it was held that the action of the Vice-Chairman was in pursuance of the Act and a notice under sec. 86B of the Bengal Municipal Act was necessary. *Sansanka Sekhar Bannerji vrs. Sudhansu Mohan Ganguly*, 48 Calcutta 45=24, C. W. N. 891.

**When notice is required.** As would be seen from the cases cited above that notice is required in those cases where the plaintiff claims damages or compensation for some wrongful act committed by the Commissioners or their officers in the exercise or honestly supposed exercise of their statutory powers. See in this connection, 6 Calcutta, 8 (F. B.) and the other cases cited above.

If the case comes under this section, notice must be given to enable the Commissioners to ascertain the facts and to tender satisfaction if they think proper under sec. 68 (1) cl. (xxii); the notice must be given promptly, at least within two months of the accrual of the cause of complaint and the suit must be brought within three months of the cause of action.

**Contents of the notice.** It must state (1) the cause of the suit, (2) the name and place of abode of the intending plaintiff and (3) the relief sought and these particulars must be stated clearly. Cause of suit means the same thing as cause of action.

In a suit against the municipality the plaintiff must show that the right to sue accrued to the plaintiff within three months before the institution of the suit. *Dwarka Nath Gupta vrs. Corporation of Calcutta*, 18 Cal 91

A notice of action against the Municipal Commissioners is absolutely necessary, a notice objecting to and asking for a re-consideration of the order complained of is not sufficient. *Abhoynath Bose vrs. The Chairman and Deputy Chairman of the Municipal Committee of Kishanghur*, 7 W. R. 92

When there passed some correspondence between the plaintiff and the President of the Madras Municipality, and the plaintiff stated that he had asked his auctioneer to sell the horse which had sustained damage and that he would proceed to recover such loss as he had sustained and later on the plaintiff's attorneys demanded payment of Rs. 1,000 as damages; on an objection to the notice it was held that (1) the two letters should be read together, (2) that the cause of action was stated sufficiently in the second

letter, (8) the plaintiff's address was given in the first letter. *Eales vs. Municipal Corporation for the City of Madras*, 14 Mad. 386.

In a Bombay case it was held that the section only required the notice to state with reasonable particularity the cause of action, the individual by whom the damage was done and the acts which caused the damage and so long as the notice contained these it was sufficient. *Dhondiba Krishnaji and others vs. Municipal Commissioners of the City of Bombay*, 17 Bom. 307. (The provisions as to notice in the Bombay and Madras Municipal Acts are the same as in this Act).

In a suit no cause of action will be allowed to be raised, except that disclosed in the notice of action required to be given. It is only in a case in which the plaintiff has through mistake or inadvertence, omitted to state the right cause of action, that the Court ought to raise an issue which involves such a cause of action by allowing the plaintiff to amend the plaint. *Ullman and others vs. The Justices of the Peace for the Town of Calcutta*, 8 B. L. R. 265 (supplement to Weekly Report, Vol. III p. 465).

In an Allahabad case it was held that provisions similar to the present section only applied to suits in which relief of a pecuniary nature was claimed for something done under the Act and for which persons performing them were personally liable for damages. *Manni Kasaundhan vs. Crooke*, 2 All. 296.

"It is now accepted as established law that the provisions in question only applies to suits arising out of a pecuniary claim for acts done by the Commissioners or their subordinates in excess of their statutory power." *Collier's B. M. Act*, p. 278.

The name and place of abode of the intending plaintiff must be given in the notice, the section expressly requires this.

A suit must fail if the description is wanting and a suit can be permitted to be withdrawn with liberty to bring a fresh suit if the notice was defective in form if it did not state the place of abode of the plaintiff according to the requirements of the section. *Dwarka Nath Gupta vs. Corporation of Calcutta*, 18 Cal. 91.

Although the section does not expressly lay down that the relief sought is to be given in the notice; still to make the notice complete and to give the Commissioners opportunity to ascertain the actual amount of damages claimed and to facilitate the settlement by payment of compensation for which notices are meant the relief sought should be given in the notice.

The notice must allow a full month's interval between it and the institution of the suit so that the Commissioners may have the full legal time.

The notice in writing is to be delivered or left at the office of the Commissioners if the suit is intended to be brought against the Commissioners only, and at such office as also at the place of abode of the person against whom the suit is intended to be brought if the suit is intended to be brought against any officer of the said Commissioners or any person acting under their directions.

**When notice is not required.** No notice is necessary in cases arising out of contracts or quasi-contracts or suits for refund of taxes or rates illegally levied or cases where the plaintiff does not claim damages or compensation for some wrongful acts committed by the Commissioners or their officers in the exercise of or honestly supposed exercise of their statutory powers.

The word "anything done under this Act" used in sec. 363 of the B. M. Act (as also in this section) refers to tortious acts and not to any act arising out of a contractual or quasi-contractual basis. *Ambika Charan Mazumdar vrs. Satish Chandra Sen*, 2 C. W. N. 689.

Sec. 363 is applicable in those cases where the plaintiff claims damages or compensation for some wrongful act committed by the Commissioners or their officers in the exercise or honestly supposed exercise of their statutory powers. It has no application to a suit against the Chairman of a municipality by an inspecting *pundit of pathshalas* or primary schools under the municipality to recover his pay. Such a suit is for breach of contract and not for anything done under the Act. *Panchanan Chatterji vrs. Santosh Kumar Bose, Chairman, Burdwan Municipality*, 65, I. C. 105.

Sec. 377 of the B & O Municipal Act which corresponds to sec 363 of the Bengal Municipal Act does not cover cases of contract. *Rambilakh Singh & another vrs. The Chairman of Dinapore Nizamat Municipality*, 7 P. L. T. 529.

A suit brought to recover from the Municipal Commissioners a sum of money due for timber supplied under a contract duly made with them did not require any notice as it was a suit on a breach of contract. *Mayanbi vrs. McQuhae, Vice-President of the Madura Municipality*, 2 Madras 124

Where a suit was brought to compel a municipality to rebuild some *otas* which the plaintiff permitted the municipality to remove on the latter agreeing to rebuild them and which the municipality refused to perform was a suit for specific performance of contract or for damages for breach thereof. Such a suit is not an action for anything done or purporting to be done in pursuance of the Bombay District Municipal Act and need not be brought

with 3 months of the cause of action. *Municipality of Fairpur vs. Mani Dulab Sett*, 22 Bombay 637.

A suit brought to restrain by an injunction the municipality from laying water pipes on plaintiff's land was not a suit for anything done in pursuance of the Act, but to prevent the municipality from doing what the plaintiff alleged to be an illegal act and no notice under sec. 48 of the Bombay Municipal Amendment Act (Bombay Act II of 1884) was necessary. *Harilal Ranchodlal vs. Himmat Manik Chand*, 22 Bombay 636.

In a suit for ejectment from a land which the municipality wrongfully and illegally encroached on, it was held by a Full Bench that sec. 48 of Bombay Act II of 1884 did not apply to actions for the possession of lands brought against a municipality and Justice Ranade further opined that sec. 48 did not generally apply to suits for the possession of lands except those where the claim arose on account of some act or omission of the municipality when it acted in pursuance of its statutory powers and encroached upon private rights. *Manohar Ganesh Tamebekar vs. The Dakor Municipality*, 22 Bombay 289 (F. B.)

A contractor deposited Rs. 500 with the municipal council at Negapatam and undertook a contract with it which provided that he should forfeit the amount on default made by him in carrying out his contract and the amount was by a resolution forfeited to the council. The plaintiff purchased the right to recover the money and sued the municipality for it. It was held that the suit was not a suit under sec. 261 of the Madras Act IV of 1884 and was not barred. *Srinivas vs. Ratnasubapathi*, 16 Madras 474.

A suit for recovery of compensation for land taken up by the municipality for street improvements or in the alternative for that sum as damages for the breach of contract for purchase money for the land does not require a notice under sec. 527 of the Bombay Act III of 1888. *Maniklal Motilal and another vs. The Municipal Commissioners for the city of Bombay*, 19 Bombay 407.

Where the plaintiffs sued without notice the municipality of Parola to obtain a declaration that a certain building erected by them had been built in accordance with and not in contravention of the orders issued by the municipality and further to obtain an injunction restraining the municipality from pulling it down, held that notice was not made an indispensable preliminary to such a suit by Sec. 48 of the Act (Bombay Act II of 1884). *Municipality of Parola vs. Lakshman Das Supadubhai*, 25 Bombay 142.

No notice is necessary to recover possession of lands taken by the municipality. In re Chairman of the Municipal Commissioners of Bhagalpur, 8 C. L. J. 54 (n) following Chandrasekhar Bandopadhyay *vs.* Abhoy Charan Bagchi, 6 Calcutta 8 (F. B.)

A suit to obtain declaration that the plaintiffs were not liable to assessment and for a refund of the tax paid under protest can be claimed without giving a notice under section 368 of the B. M. Act respecting the refund claimed; as the word 'act' used in the section refers to tortious acts and not to any act arising out of a contractual or quasi-contractual basis. Ambica Charan Mazumdar *vs.* Satish Chandra Sen, 2 C. W. N. 689. See also the case of Chairman, Tikari Municipality *vs.* Nawab Alam Ara Begum, 7 P. L. T. 804.

In a suit to recover certain town duties which the plaintiff had paid on importing gram and sugar but which he was entitled to have refunded on exporting them; it was held that no notice under section 527 of the Bom. Act III of 1888 was necessary. Ranchordas Mooraji *vs.* Municipal Commissioners for the City of Bombay, 25 Bom. 387.

House-tax and water tax illegally levied from school buildings, exclusively used for charitable purposes, and paid under protest, could be recovered without notice as they were illegal exactions. Fisher *vs.* Twigg, 21 Mad. 367.

A sanction to build given by the Municipal Corporation of Calcutta under sec. 427 of the Calcutta Municipal Consolidation Act (Act II of 1888 B.C.) is absolute and when such sanction is once given there is nothing in the Act which enables the Corporation to revoke it. In an action for damages caused by the withdrawal of the sanction it was held that the withdrawal of the sanction was not done nor did it purport to have been done under the Act; and that the suit for damages having been based upon such withdrawal, the special limitation of three months as provided by section 427 of the Act did not apply to it. Tullaram *vs.* The Corporation of Calcutta, 80 Calcutta 317.

**Sub-section (2). Limitation.** If the case comes within this section the action must be brought within three months after the cause of action accrued; the same limitation is prescribed for suits for compensation for doing or for omitting to do an act alleged to be in pursuance of any enactment in force for the time being in British India by, Art 2 of Limitation Act 1938.

The question whether the special limitation applied or not was to be determined by deciding whether the suit was brought in respect of any thing done under the Act or not. If it was then the special limitation pre-

valued; if it was not the ordinary law of limitation was the one to be applied. See in this connection *Brij Mohan Singh vs. The Collector of Allahabad as President of the Municipal Committee*, 4 All. 102.

In a suit under the section the plaintiff will have to show that the right to sue upon which the suit could be maintained had accrued within three months before the institution of the suit. *Dwarka Nath Gupta vs. Corporation of Calcutta*, 18 Cal. 91.

In the Calcutta Municipal Act (Act III of 1899), sec. 634 (2) contained the expression "accrual of the right to sue" which was held to apply to the date when the month's notice expired from which date the plaintiff had three months within which to commence his action; the words "accrual of the right to sue" were held to mean "accrual of the cause of action." *Corporation of Calcutta vs. Shyama Charan Pal*, 32 Cal. 277.

The expression used in this sub-section is "accrual of the cause of action" so the period of limitation of three months runs from the date of the accrual of the cause of complaint and not from the period of the expiry of the notice.

The Municipal Commissioners are entitled to one month's notice of action when they have been acting *bona fide* in the belief that they were exercising powers given to them by the Act; not if their proceedings were not justified by the Act and only colourably done under cover thereof. *Gopee Kissen vs. Mr. W. H. Ryland and others*, 9 W. R. 280. Such action means the action referred to in sub-section (1).

The kind of suits contemplated by sec. 43 of the N. W. P. and Oudh Municipalities Act (Act XV of 1873) (which is similar to the present section) and for all its purposes was a suit in which pecuniary amends or damages were claimed (the use of the word "sufficient amends" in sub-section (2) also point to the same conclusion). The limitation of three months provided by the section applied only to suits against Municipal Committee for damages or pecuniary compensation in respect of anything done under the Act and did not apply to suits for declaration of rights, or for an injunction and so forth, in which compensation is not claimed. *Brij Mohan Singh and others vs. The Collector of Allahabad as President of the Municipal Committee of Allahabad*, 4 All. 102. See also *Manni Kasaundhan vs. Crooke*, 2 All. 296 in this connection.

The suit must be brought within three months of the accrual of the cause of action, the notice must give full one month's interval between it and the institution of the suit. So the notice must be served at any event within 2 months of the accrual of the cause of action; otherwise the suit will become barred.

A suit for refund of municipal tax paid under protest need not be instituted within three months of the cause of action. *The Chairman of the Tikari Municipality vrs. Nawab Alam Ara Begum*, 7, P. L. T. 804.

**Sub-section (3).** "Sufficient amends" was held to mean only pecuniary amends or damages. See *Brij Mohan Singh's case* in 4 All. 102. The object of giving notice to the Commissioners is to allow them to consider the case and settle it amicably if they think proper or are so advised, and if compensation is paid a further suit will not lie, if however, the amount of compensation is not sufficient and is disputed then under sec. 379 it can be settled in such manner as the parties agree or it will have to be ascertained by the Civil Court. See notes to sec. 379 and sec. 68 (1) (xxii).

**Burden of proof.** In a suit for damages against a Municipality for negligence in the exercise of statutory powers it was held by the Bombay High Court that the onus of proof of negligence lay on the plaintiff, and if neglect in the execution of their statutory powers and duties was not brought home to the municipality the suit must fail as unsustainable in law, however, great the damage sustained by the plaintiff. *The Municipality of Hubli vrs. Lucus Eustratio Ralli and another*, 35 Bom. 492.

In a suit under this section the plaintiff will have to show that the right to sue upon which the suit could be maintained had accrued within three months of the institution of the suit. *Dwarka Nath Gupta vrs. Corporation of Calcutta*, 18 Cal. 91.

The onus of proving service of notice for the suit is also on the plaintiff. See sub-section (2) above.

**Relief in the suit.** If in the suit it is found that the Commissioners acted in good faith and within their powers the suit will be dismissed. See in this connection *Sasanka Sekhar Banerji vrs. Sudhansu Mohan Ganguly*, 48 Cal. 45; and the various other cases cited at page 51 *ibid*.

Where the defendant corporation prosecuted the plaintiff for allowing a piece of land to be covered with jungle and night soil and had procured the infliction on him of a fine which they realised by the attachment and sale of his moveable properties, the plaintiff brought the suit for value of the goods and damages it was held that the suit was not maintainable. *Motilal Bose vrs. The Howrah Municipality*, 23, W. R. 222. See also in this connection the case of *Duke vrs. Rameshwar Malia*, 26 Cal. 811.

**Contest of liability in civil courts.** **373.** Any owner or occupier of land may contest his liability to pay any expenses or fees under sections 364 to 368 or may contest the amount which he has been called upon to pay in a civil court of competent jurisdiction:

**Provided that the fact of such action having been instituted shall be no bar to the recovery of the said amount, in the manner provided by section 368.**

### NOTES

The section corresponds to section 184 of B. M. Act.

Under this section the owner or occupier may contest in the civil court. (1) his liability to pay any expenses or fees under secs. 364 to 366 and (2) the amount of such expenses or fees.

Sec. 377 puts certain restrictions on suits being brought against the Commissioners or their officers or any person acting under their direction, for anything done under this Act, but this section puts no limitation on persons to sue for any of the reliefs mentioned in it.

As will be seen from the cases cited under sec. 377 and sec. 119 that the jurisdiction of civil courts to interfere in matters municipal is subject to strict limitations.

As to the necessity of any works the Commissioners are the sole judges, so long as they use their powers with discretion; but the civil court can interfere if the Commissioners have acted *ultra vires* by calling on a party to do something which they are not empowered by law and equity to demand. In a suit under this section the plaintiff can show that he is not the proper person on whom notice should have been served or that he is not responsible or that the amount is excessive, i.e., that the municipality has not incurred so much expenses and is not entitled to so much.

### COMPENSATION

Dispute as to compensation payable by the Commissioners.

**379. Should a dispute arise touching the amount of compensation which the Commissioners are required by the Act to pay it shall be settled in such manner as the parties may agree, or in default of agreement, the amount and, if necessary, the apportionment of the same shall be ascertained and determined by a civil court of competent jurisdiction.**

### NOTES

The section is based on section 824 of U. P. Act II of 1916 and sec. 185 of B. M. Act.

Sec. 68 relates to the acquisition of land and payment of compensation for such acquisition. This section deals with other cases where any compensation are by this Act directed to be paid by the Commissioners; such as in secs. 174 (1), 200, 228 (1), 288 (3), 288 (3), 300.

Other cases in which the Commissioners have option to award compensation are provided in sec. 68 (1) (xxii).



If in any of these cases any dispute arises as to the amount of compensation to be paid, it can be settled in such manner as the Commissioners and the parties agree, in default of such agreement the amount or the apportionment of it between the various persons entitled to it will be determined by the Civil Court.

In awarding compensation in such suit, the Civil Courts will not allow the claim to the additional 15 per cent. as statutory compensation as the Municipal Act does not provide for it. The Municipal Commissioners for the city of Bombay *vs.* Patel Haji Muhammad Ahamed Janoo, 14 Bombay 292 and the Municipal Commissioners for the city of Bombay *vs.* Syed Abdul Huk Kurmalker, 18 Bombay 184.

When the lessee of a land sued for damages against a contractor of the municipal board for stacking building materials upon that land and thereby preventing him from using it, it was held that this was not an act in regard to which the Municipal Act laid down that compensation should be payable by the municipal board and so sec. 324 of the United Provinces Municipal Act did not apply to such a suit and damages could be recovered from the contractor in the usual way. Muhammad Ghazanfar Ulla *vs.* Babulal, 43 Allahabad, 614 (F. B.)

### SAVINGS

Savings.

**320. (1)** No assessment list or other list, notice, bill or other such document specifying, or purporting to specify, with reference to any tax, charge, rent or fee, any person, property, thing or circumstance shall be invalid by reason only of a mistake in the name, residence, place of business or occupation of the person or in the description of the property, thing or circumstance, or by reason of any mere clerical error or defect of form; and it shall be sufficient that the person, property, thing or circumstance is described sufficiently for the purpose of identification, and it shall not be necessary to name the owner or occupier of any property liable in respect of a tax.

**(2)** No distress or sale made under this Act shall be deemed unlawful nor shall any party making the same be deemed a trespasser on account of any error, defect or want of form in the bill, notice, summon, warrant of distress, inventory or other proceeding relating thereto.

### NOTES

Sub-sec. (1) is based on sec. 165 of U. P. Act II of 1916 and secs. 316 and 358 of B. M. Act. Sub-sec. (2) corresponds to sec. 128 of B. M. Act.

sec. 20-201-01

**Sec. 200. (1).** This section refers only to errors or defects of form in the notice, bill, assessment list or any other list or mistakes in the name, residence, description of the person, property, thing or circumstance. But the section does not cure material irregularities or defects.

Where a Vice-President, purporting to act under the provisions of sec. 61 of the Town Improvement Act 1871 which empowered the Commissioners to prepare and revise the list of tax-payers, to issue notices of assessment to persons liable to the profession tax, issued a notice of assessment to D, although no case of emergency existed, within the meaning of sec. 27 of the Act, enabling the President, or in his absence, the Vice-President, to exercise the powers vested by the Act in the Commissioners; on a prosecution for non-payment of the tax the trying Court acquitted the accused and on revision it was held that the insufficiency of the notice of assessment was no answer to a charge under sec. 62 of the Act against D for exercising his profession without paying tax. *The Municipal Commissioners of Mangalore vrs. J. A. Davies*, 7 Madras 65.

An assessment made by an assessor whose power to make it may be defective and which has been confirmed by the appeal committee could not be impeached, as it was wholly immaterial what machinery was used for arriving at the valuation, as all that was required was that there should be an assessment ready for publication and open to review. *Chairman of Chittagong Municipality vrs. Jogesh Chandra Roy*, 37 Calcutta 44.

The omission to present a rate bill or to serve a previous notice of demand before distress is only an irregularity and not an illegality. *Bepin Chandra Biswas vrs. Corporation of Calcutta*, 31 Calcutta 452.

**Sub-sec. (2).** The mistake of a few rupees in a notice cause by an error in addition is not sufficient to impeach or affect the demand where the directions of a Municipal Act have been substantially complied with; sec. 48 of Act III of 1864 B. C. (a similar section) protecting the Commissioners against such mistakes. *Gopikishen Gosain vrs. Mr. W. H. Ryland*, 9 W. R. 562. In this connection the case of *Queen Empress vrs. Poornalai Udayam*, 21 Madras 296 may be referred to. A notice of demand of a house tax under the Local Boards Act (Act V of 1884 Madras) was at first affixed to the house and then a warrant of distress was issued on the person and there was successful resistance to it. In the course of the trial it appeared that one column of the house register had not been filled up and that a bucket and spade sought to be attached were exempt from attachment, it was held nevertheless that the provisions of the Act had been sufficiently complied with as regards the preliminary steps for making the

demand and the service of notice, and the resistance was not justified and the convictions under sec. 186 and 353 of the Penal Code were maintained.

## CHAPTER XIII

### DELEGATION OF POWERS AND CONTROL DELEGATION.

**351.** The Local Government may, with regard to municipalities generally or to any municipality or class of municipalities in particular, and subject to such conditions or restrictions as it may deem fit to impose, by notification delegate to the Commissioner of the Division or to any other authority any of the powers vested in the Local Government by this Act, other than any power to make rules and other than the powers conferred by sections 4, 6, 11, 104 (second proviso), 113, 384, 385, 388 and 389.

### NOTES

The section corresponds to sec 29A of the B. M. Act.

" Instead of specifying particularly certain powers which may be delegated by the Local Government to the Commissioner of a Division as is done in sec. 29A of the Bengal Act it seems preferable to give a general power of delegation excluding only certain powers " Notes on clauses para. 124.

Except the power of making rules under some sections of this Act and powers under secs. 4, 6, 11, 104 (second proviso), 113, 384, 385, 388 and 389 the Local Government can delegate all its other powers under this Act to the Commissioner of a Division or to any other authority as it thinks proper. This power the Local Government can in its discretion exercise subject to such restrictions as it thinks fit with regard to municipalities generally or to any municipality or class of municipalities in particular

Under sec. 29A (1) the Government had directed that the powers and functions of the Local Government under secs. 30 (which corresponds to sec. 59), 265 (which corresponds to sec. 249) and 259 (corresponding to sec. 250) shall be exercised by the Commissioners of Divisions in regard to all the municipalities within their respective jurisdictions. Notification (Munl.) No. 1095 T-M of the 12th June, 1908. This notification until modified will be in force in the municipalities governed by this Act, so the Commissioners of Divisions can exercise the powers of the Local Government under sec. 59, i.e. exclude any road, drain, bridge from the operation of the whole or any portion of this Act.

The present sections 249 and 250 of this Act leave no power with the Local Government and the Commissioners have been given absolute power to make or renew use of burial or burning grounds and the registration of the same and provide places to be used as burial or burning grounds.

#### CONTROL

**Power of inspection. 382.** Any person authorized by the Local Government in this behalf may enter on and inspect, or cause to be entered on and inspected, any immovable property occupied by, or under the control and administration of, the Commissioners, or any work in progress under their direction; and may call for and inspect any document which may be, for the purposes of this Act, in the possession or under the control of the Commissioners.

#### NOTES

The section corresponds to sec. 62 of the B. M. Act.

Under this section the Local Government may authorize any person to enter on and inspect, the office properties, records or works under construction of the municipality. "We consider that the power of inspection should not be confined to the District Magistrate or Sub-divisional Magistrate. Other officers of Government and members of the Local Self-Government Board may suitably be authorised to assist in the work." Report of the Select Committee, p. 89.

"The duties of the inspecting officers do not end with noting defects; it is not enough to detect an irregularity or point out an omission, but definite instruction should be issued showing how each irregularity should be corrected and each omission repaired. Circ. (Munl.) No. 10 T-M of 1st July, 1898. In the same circular Government had desired that Commissioners of Divisions should occasionally inspect municipalities at the headquarters of districts and send copies of their inspection notes for the perusal of the Government.

The Sanitary Commissioners also were authorised to inspect the sanitary condition of municipalities; and Government had ordered that all inspection reports and important communications should be sent to municipalities through Magistrate, and that intimation of the proposed visit should be conveyed in the same manner. Order (Munl.) No. 605 T.-M. of 2nd November, 1898.

Notification No. 589 L. S. G. dated the 18th January, 1923 (see B. & O. Gazette, dated the 24th January, 1923) runs thus:—In exercise of the power conferred by section 382 of the Bihar and Orissa Municipal Act, 1922, the Government of Bihar and Orissa in the Ministry of Local Self-Govern-

ment are pleased to authorize each of the officers designated in the first column of the schedule hereto appended to enter on and inspect the property and works, and to call for and inspect any document, of the kind referred to in the said section, in the municipalities, and in respect of the matters, specified in the second and third columns respectively of the said schedule against the designation of such officer.

### THE SCHEDULE.

Designation of officer	Municipalities	Matters in respect of which inspection may be made.
1	2	3
Commissioners of Divisions.	All municipalities in the division.	All matters.
District Magistrates	All municipalities in the district.	Ditto.
Subdivisional Magistrates.	All municipalities in the subdivision	Ditto.
Director of Public Health	All municipalities in the province.	All matters relating to public health, sanitation, conservancy water-supply, vaccination, etc.
Assistant Director of Public Health	All municipalities in his circle.	All matters relating to public health, sanitation, conservancy, water-supply, vaccination etc.
Inspector General of Civil Hospitals.	All municipalities in the province.	All matters relating to hospitals, dispensaries, medical relief etc
Civil Surgeons	All municipalities in the district.	All matters relating to public health, vaccination, sanitation hospitals, dispensaries and medical relief.
Director of Public Instructions.	All municipalities in the province.	All schools and matters relating to public instruction.
Inspector of Schools	All municipalities in the division.	Ditto.
Inspectress of Schools.	All municipalities in the division in her charge.	Ditto.
Assistant Inspectress of Schools.	All municipalities in the division.	Ditto.
District Inspector of Schools.	All municipalities in the district.	Ditto.
Sub-Inspector of Schools	All municipalities in his circle.	Ditto.
Director of Civil Veterinary Department.	All municipalities in the province.	Veterinary dispensaries, and all matters connected with the licensing of carriages and animals plying for hire and milk supply.

Designation of officer.	Municipalities.	Matters in respect of which inspection may be made.
1	2	3
Deputy Director, Civil Veterinary Department.	All municipalities in his range.	Ditto.
Assistant Director, Civil Veterinary Department.	All municipalities in his range.	Ditto.
Superintending Engineer, Public Health Department.	All municipalities in the province.	All matters relating to sanitary works, e g. water supply, drainage, sewerage, markets etc.
Executive Engineer Public Health Department.		
Chief Engineer (Roads and Buildings) Public Works Department.	All municipalities in the province.	All matters relating to public works.
Superintending Engineer Public Works Department	All municipalities in his circle.	Ditto.

In column 1 below " Inspector of Schools " " Inspectress of Schools and Assistant Inspectress of School " had been added by Notification No. 1972 L. S. G., dated the 15th Feb., 1923 (see B. & O. Gazette, dated the 21st February, 1923).

In column 3 against " Director of Civil Veterinary Department," after " Veterinary Dispensaries " " slaughter houses " and below " Deputy Director, Civil Veterinary Department " " Assistant Director, Civil Veterinary Department " and Dittos against it in the 2nd and 3rd columns were inserted by Notification No. 2603, L. S. G., dated the 1st March, 1923 (see B. & O. Gazette, dated the 7th March, 1923).

Power to suspend action under Act. **383. (1) The District Magistrate may, by order in writing, suspend within the limits of the district the execution of any resolution or order of the Commissioners of any municipality, or prohibit the doing within those limits of any act which is about to be done, or is being done, in pursuance of, or under cover of, this Act, if, in his opinion, the execution of the resolution or order, or the doing of the act, is likely to lead to a serious breach of the peace, or to cause serious injury to the public, or to any class or body of persons.**

**(2) When the District Magistrate makes any order under this section, he shall forthwith forward a copy thereof, with a statement of his reasons for making it, to the Local Government, which may thereupon rescind the order or direct that it continue in force with or without modification, permanently or for such period as it thinks fit.**

**(3) The Local Government may set aside any resolution or order of the Commissioners of any municipality, if in its opinion the resolution or order is in excess of the powers conferred by law.**

### NOTES

The section is based on sec. 68 of B. M. Act. See the wording of sec. 68 of the Bengal Municipal Act; under it the Commissioner of the Division or the District Magistrate could suspend the execution of any resolution or order of the Commissioners or any act about to be done by them if in his opinion the resolution, order or act was in excess of the powers conferred by law on the Commissioners; this power is now reserved to the Local Government by sub-section (3).

"We consider that local officers should not have power to suspend action which is *ultra vires*, but only action which is likely to lead to a breach of the peace or to cause serious injury. As the District Magistrate is responsible for the peace of the district this power need not be given to the Commissioner." Report of the Select Committee, para. 90.

The powers hereby given to the District Magistrate are, (1) to suspend execution of a resolution or order of the municipal body or (2) to prohibit the doing of some act which is about to be done or is being done in pursuance of or under cover of this Act; but the exercise of these powers must be by an order in writing and is permissible in cases where the Magistrate is of opinion that the execution of the resolution or order or the doing of the act is likely to lead to a serious breach of the peace or to cause serious injury to the public or to any class or body of persons. The powers under this section are to be exercised in extreme cases such as an apprehension of a serious breach of the peace or serious injury to the public or to any class or body of persons.

When the District Magistrate makes an order under sub-sec. (1) he shall forthwith forward a copy thereof, recording the reasons for the order to the Local Government who may then rescind it or confirm it with modifications.

In an Allahabad case a municipal board granted permission to B to build a temple. The District Magistrate acting under section 183 (a similar section) of the Municipal Act (Act I of 1900) (on a petition to him by the Mahomedan residents of the locality) made an order cancelling the permission given by the municipal board and the Local Government confirmed this order of the District Magistrate. B brought a suit for a declaration that he had a right to build the temple, it was held that the suit was not maintainable: and further that the Civil Court had no power to disturb the order of the District Magistrate who act within his jurisdiction and whose order

had been duly confirmed by the Local Government. *Gulaki Das vs. Secretary of State for India-in-Council*, 31 Allahabad 371=1, I. C. 896.

See also the observations of Justice Bucknil in *Madaran Kassab vs. King-Emperor*, 4 Patna 311=6, P. L. T. 528. In that case the Commissioners of the Dhanbad Municipality passed a resolution to the following effect, "in view of the fact that our country is suffering great loss and innumerable miseries by the indiscriminate slaughter of cows and other animals of the bovine species the existing slaughter houses should be abolished and no licence shall be granted for that purpose in future" and refused to grant a licence under sec. 259 to the petitioner. On a prosecution of the petitioner for carrying on an offensive trade without a licence, there was a conviction and on revision it was contended that although there may be possibly a power in municipalities to prohibit, by the refusal of licences, the killing of cattle throughout the municipal area, such procedure is not such as was ever contemplated under any of the provisions of the B. & O. Municipal Act. Mr. Justice Bucknil opined that merely on such religious or sentimental grounds as are contained in the resolution of the Dhanbad Municipality licences under sec. 259 could not be refused and such course may not only give rise to hardship in certain instances but also possibly to some disturbances between those whose ideas are against the slaughter of cattle and those whose ideas are not against the slaughter of cattle and the person aggrieved may invoke the provisions of secs. 383 or 384 or 385 of the Act.

See also the case of *Moran and others vs. Chairman of Motihari Municipality*, 17 Calcutta 329 where the Motihari Municipality refused licence for a market even after a certificate of fitness was granted. There was an appeal under sec. 68 of the B. M. Act to the Commissioner who declined to exercise the powers under the section. In a suit for an order directing the Municipal Commissioners to grant a licence under sec. 339 of B. M. Act and for compensation it was held there were no words in sec. 339 which rendered it obligatory on a municipality to grant a licence.

**Sub-sec. (3).** The Local Government can only set aside a resolution or order of the municipality which is *ultra vires* or is in excess of the powers conferred by law.

Under the Bengal Act sec. 63, the Commissioner of the Division or the District Magistrate could suspend the execution of any resolution which was *ultra vires*.

Powers of Local Government in case of default.

**384. (1)** If at any time it appears to the Local Government that the Commissioners of any municipality have made default in performing any duty imposed



on them by or under this or any other Act, the Local Government may, by an order in writing, fix the time for the performance of that duty.

(2) If such duty is not performed within the period so fixed, the Local Government may appoint the District Magistrate to perform it, and may direct that the expense of performing it shall be paid, within such time as it may fix, to the Magistrate from the municipal fund.

(3) If the expense is not so paid, the District Magistrate, with the previous sanction of the Local Government, may make an order directing the person having the custody of the balance of the municipal fund to pay the expense, or so much thereof as is from time to time possible, from the balance, in priority to any or all other charges against the same.

#### NOTES

The section corresponds to section 64 of B. M. Act.

Under the Bengal Act the Local Government used to take action only on the report of the District Magistrate or the Commissioner of the division. Under this section the Local Government can take action whenever it appears to it that the Commissioners do not carry out the duties imposed on them by this, or any other Act, and it is proper that action should be taken under this section. The Local Government can take action of its own motion, on reliable information, and when it takes action, by an order in writing it first asks the Commissioners to do the duties within a period fixed by it and if default is still made the duties can be performed by the District Magistrate, under its orders and the costs recovered from the Municipal Fund.

“ The procedure prescribed in this section is only applicable to cases where there has been a distinct default in performing or an omission to perform a statutory duty. The procedure could not properly be applied to any case in which there was room for difference of opinion as to whether there had been any default or not.” Collier's B. M. Act, p. 65.

See also in this connection the observations of J. Bucknill in 4 Pat. 311=6, P. L. T. 528 as to when action can be taken under this section, and notes to sec 868 *ante*.

Power to supersede Commissioners in cases of incompetency, default or abuse of powers.

385. If, in the opinion of the Local Government, the Commissioners of any municipality are not competent to perform, or persistently make default in the performance of, the duties imposed on them by or under this Act or otherwise by law, or exceed or abuse their powers, the Local Government may, by an order published,

with the reasons for making it, in the Gazette, declare such Commissioners to be incompetent or in default, or to have exceeded or abused their powers, as the case may be, and supersede them for a period to be specified in the order.

### NOTES

The section corresponds to section 65 of B. M. Act.

" This and the next clause take the place of sections 65 and 66 of the Act (B. M. Act). The reference to Schedule I and II disappears as these Schedules have been discarded. It is for consideration whether Government should not also be empowered to take the milder course of requiring the Commissioners to vacate office." Notes on Clauses p. 125.

Action under this section can be taken by the Local Government if the Commissioners, (1) are not competent, (2) persistently make default in the performance of the duties imposed on them by this Act, (3) exceed or abuse their powers. In such cases the Local Government by an order published in the Gazette may suspend them for a specified period. Action under this section is taken only in exceptional cases and when the default is persistent and the abuse of power is flagrant.

" The words ' in the opinion of the Local Government ' have been inserted in order to check litigation, as without them, legal proof might possibly have been required that the Commissioners were not competent or persistently made default, etc." Collier's B. M. Manual, p. 65.

An example of action being taken under this section was the case of Santipur Municipality in 1903. " The conservancy arrangements there were most unsatisfactory. There were no public latrines; almost the whole of the night-soil found its way into well-prives, of which there were 4,000, the contents of which were likely to contaminate the sources of the drinking water. In 1894 the Commissioners resolved that no new privies should be dug and all old privies should be filled up gradually; and they reserved Rs. 1,000 for public latrines; but little or nothing was done. In 1895 the condition was the same and the Sanitary Commissioner reported these facts. In 1898 the Commissioners resolved that Part IX of this Act should be extended to the place, and Government published a preliminary notification in the Calcutta Gazette; but an objection being raised by some rate-payers, they rescinded their resolution. The Government then impressed on them how greatly the town which contained 80,400 inhabitants stood in need of the systematic conservancy provided by Part IX, but they adhered in 1899 to their resolution of inaction." Inspection was again made and the report

affirmed the same defects. Then followed an outbreak of cholera and on inspection it was found that the water-supply was contaminated by the sewage from the well-prives and that no new public latrines had been constructed. "The Commissioners of the Division visited the town in 1901 and impressed on the Commissioners its serious condition and their grave responsibility. In December 1901, the Deputy Sanitary Commissioner made a further inspection, and the water supply was tested and found impure. The Government then impressed on the Commissioners in 1902 the duty of closing the well-prives and enforcing Part IX. But ignoring all the advice of the local officers, all the foregoing warnings and the seriously increased mortality, the Commissioners resolved in May 1903, that Part IX could not be enforced and that condemned wells should be merely disinfected every three months."

"Taxation was low in the municipality and the Commissioners did not secure a proper assessment. It appeared that no amount of persuasion would bring about even the smallest measure of improvement, and that only by the powers of control vested in the Government by this Act could the most elementary rules of sanitation be enforced there. Hence the Government pronounced that the case was a public scandal and action was necessary; and under this section (sec. 65 of B. M. Act) by an order setting out these facts and published in the Calcutta Gazette it declared 'that the Commissioners of the Santipur Municipality are incompetent to perform and persistently make default in the performance of their duties,' and superseded them for one year." J. Pargiter's B. M. Act, p. 93 and 94.

**Supersession.** "Supersession is nothing more than the dismissal of the incompetent councillors, followed by the appointment of, to borrow the language of English law, a *customs* for the discharge of the functions of the council pending the nomination or election of other persons who would resume work in the normal way. In a word, supersession is but a suspension of the council." Per J. Subramania Aiyer in *Mahamahapadhyaya Ranga-chariar vrs. The Municipal Council of Kumbakonam*, 29 Mad. 539 (544).

See in this connection the observations of J. Bucnill in *Madaran Kassab vrs. King-Emperor* in 4 Pat. 311=6, P. L. T. 528 as to in what circumstances action may be taken under this section and see also notes to section 333 *ante*.

Consequence of  
supersession.

**336. (1)** When an order of supersession has been passed under the last preceding section, the following consequences shall ensue:—

(a) all the Commissioners shall, as from the date of the order, vacate their offices as such Commissioners;

sec. 885

- (a) all the powers and duties which may, under the provisions of this Act, be exercised and performed by the Commissioners, whether at a meeting or otherwise, shall, during the period of supersession, be exercised and performed by such person or persons as the Local Government may direct;
- (e) all property vested in such Commissioners shall, during the period of supersession, vest in the Government.

(2) On the expiration of the period of supersession specified in the order, unless the Local Government otherwise directs, the municipality shall be re-established by election and appointment, and the persons who vacated their offices under clause (a) of sub-section (1) shall not be deemed disqualified for election or appointment.

### NOTES

This section corresponds to section 66 of B. M. Act, See Notes on Clauses, para. 125 quoted under sec. 885.

When an order of supersession under section 885 is passed, the Commissioners shall vacate their offices from the date of such order and during the period the powers and duties of the Commissioners shall be exercised and performed by the person or persons appointed by the Local Government for the purpose; and all properties of the Commissioners during such period shall vest in Government, and as a consequence of the appointment of persons to conduct the municipal administration during the period of supersession on such persons.

**Sub-section (1) (b).** "Whether at a meeting or otherwise":—under the old Act it was held that the officer appointed under sec 66 cl. (b) could only exercise the powers of the Commissioners and not those of the Commissioners at a meeting. *Bepin Behary Sen vs. Chairman of Santipur Municipality*, 13 C. W. N. 132=1, I. C. 358. This decision was set aside in appeal on the preliminary ground that no second appeal lay, without touching the merits of the decision.

Seeing this difficulty the Bengal Municipal (Amendment and Validation Act) Bengal Act II of 1910 was passed empowering the officer appointed during the period of supersession to exercise all the powers vested in the Commissioners at a meeting. The present section has adopted the amendment of the Bengal Act.

**Sub-section (2).** "Unless the Local Government otherwise directs" implies that the Local Government may order, (1) that the municipality which is to be re-established shall be composed of Commissioners definite

members of whom will be elected and the rest appointed and (2) that the old Commissioners shall not be eligible for re-election or appointment; the old Commissioners will be eligible for election unless they are disqualified by the Local Government; this power has been reserved to the Local Government to prevent unfit and incorrigible old Commissioners from re-entering and causing a recurrence of the same deplorable state in the municipality. "Re-established" means the same thing as "re-constituted" and the word "re-constituted" used in the corresponding section of the Madras Municipal Act (sec. 4B sub-section (3) cl. (b) Mad. Act IV of 1884) was held to mean the renewal of the old corporation and not the creation of a new one and all the rights and liabilities of the superseded council will devolve on the council so reconstituted as its rightful successor. *Mohamohopadhyay Rangachariar vrs. The Municipal Council of Kumbakanam*, 29 Mad 589.

#### Disputes

**387. (1)** If any dispute, for the decision of which this Act does not otherwise provide, arises between the Commissioners of two or more municipalities constituted under this Act, or between the Commissioners of any such municipality and a district board, or cantonment authority, the matter shall be referred to the Local Government.

**(2)** The decision of the Local Government to which any dispute is referred under this section shall be final.

### NOTES

The section corresponds to section 66A of B. M. Act.

Disputes between a municipality and a contiguous local authority such as another municipality, district board or cantonment authority are to be referred to the Local Government if there are no provisions in this Act for the decision of such disputes; and its decision shall be final.

## CHAPTER XIV

### NOTIFIED AREAS.

Constitution of notified areas.

**388. (1)** The Local Government may by notification declare that it is necessary to make administrative provision for all or any of the purposes of this Act in any area specified in the notification, other than a municipality or a cantonment.

**(2)** An area in respect of which such a notification has issued is hereinafter called a notified area.

## NOTES

The section is based on section 387 of U. P. Act II of 1916.

These three clauses (secs. 388 to 390) which are based on Chapter XII of the United Provinces Municipal Act 1916 are designed to meet the requirements of areas to which the provisions of the Bill are not appropriate but in which some quasi-municipal administration is necessary." Notes on Clauses, p. 126.

When the Local Government considers that some sanitary measures are necessary and certain provisions of this Act ought to be applied to an area which is not included in any municipality or cantonment, and that on account of three-fourths of the male population of such area not being engaged in pursuits other than agricultural, and the area containing less than five thousand inhabitants and an average number of less than one thousand inhabitants to the square mile, the area cannot be constituted a municipality then it can by a notification declare the area for which such measures it considers necessary, to be a notified area.

Notified area means an area in which there is quasi-municipal administration; and some sanitary measures adopted. After an area is constituted a notified area, then some provisions of the Act and any municipal rules or by-laws as may be specified by notification by the Local Government will apply to the area.

**Purposes of the Act** means the measures which the Municipal Commissioners are empowered to take to promote the health, comforts, safety and education of the public and also those on which they can spend the Municipal Fund under sec. 68.

Sub-section (2):—is based on sec. 388 of U. P. Act II of 1916. See in this connection sec. 2 of B. & O. Act I of 1915 (Patna Administration Act).

### The Local Government may by notification—

Power to impose taxation in, apply enactments to, and constitute committees in notified areas.

(a) apply or adapt to a notified area or to any part of a notified area any provision of this Act which may be applied to a municipality, or any rule or by-law in force or which can be made in any municipality under this or any other Act;

(b) impose in a notified area or in any part of a notified area any tax which could be imposed by the Commissioners if the notified area were a municipality; and

**(e) appoint or make rules for the appointment or election of a committee to carry out the purposes of this Act in the notified area.**

### NOTES

The section is based on Chapter XII of U. P. Act II of 1916 and is necessary for carrying on the administration in the notified area. After an area is declared to be a notified area the Local Government will by a separate notification make applicable certain provisions of this Act or any rule or by-law to the whole or portion of the area and impose any tax which could be imposed in a municipality and appoint or make rules for the appointment or election of a Committee to carry on the quasi-municipal administration.

Clause (c):—"Purposes of this Act" means the measures which the Municipal Commissioners can take to promote the health, comfort, safety education of the public and also those on which the Municipal Fund can be spent under sec. 68.

A committee under this section will be similar to the Committee created by sec. 3 proviso (d) of the Patna Administration Act (B. & O. Act I of 1915)

Construction of enactments and expenditure of proceeds of taxes imposed in notified area.

**390. When any enactment, rule or by-law is applied or adapted to, or any tax imposed in, a notified area under this Chapter, then unless a different intention appears, such enactment, rule or by-law shall apply, and the proceeds of such tax may be expended in such manner, as if the notified area were a municipality, and the committee were the Commissioners.**

### NOTES

The section is based on sec. 388 cls. (3) and (4) of U. P. Act II of 1916 and sections 3 (2) and sec. 4 of the Patna Administration Act (B. & O. Act I of 1915).

The provisions of the enactment, rule or by-law which are made applicable to the notified area by the Local Government under sec. 389 will apply unreservedly unless their operations are restricted by the notification, and the proceeds of the tax imposed will be expended on the purposes on which municipal fund can be applied under the Act. The notified area will be managed by the Committee as if they were the Commissioners and the area a municipality.

## CHAPTER XV.

### SUPPLEMENTARY AND TRANSITIONAL PROVISIONS.

Continuity of municipalities, officers, appointments, rules, etc., not affected by Act.

**391. All municipalities constituted, Commissioners, Chairmen and Vice-Chairmen appointed or elected committees established, limits defined, appointments, rules, orders and by-laws made, licences granted, notifications and notices issued, taxes and rates imposed and proceedings taken under any of the enactments repealed by section 2 shall, so far as may be, be deemed to have been respectively constituted, appointed, elected, established, defined, made, granted, issued, imposed and taken under this Act.**

### NOTES

The section is based on sections 2, 3 and 7 of B. M. Act.

This chapter is meant to keep up the continuity of the existing municipalities, to provide for the carrying on of municipal administration during the period until new Commissioners, Chairman and Vice-Chairman are elected under the new Act. Without such a provision as soon as the repealing Act comes in force the old municipalities cease to exist and till they are reconstituted there will be no municipalities. This section as it is worded only lays down that all municipalities constituted, Commissioners, Chairman and Vice-Chairmen appointed or elected, committees established, limits defined, appointments, rules, orders and by-laws made, licences granted, notifications and notices issued, taxes and rates imposed and proceedings taken under any of the enactments repealed by section 2 shall, so far as may be, be deemed to have been respectively constituted, appointed, elected, established, defined, made, granted, issued, imposed and taken under this Act; this by inference keeps the old rules, etc., in force until appointments, rules or by-laws are made under the new Act. The Bihar and Orissa General Clauses Act (B. & O. Act I of 1917) which provides for the interpretation of all Acts in force in Bihar and Orissa by section 27 lays down, "where any enactment is repealed and re-enacted by a Bihar and Orissa Act with or without modification then, unless it is otherwise expressly provided, any appointment, notification, order, scheme, rule, by-law or form, made or issued under the repealed enactment, shall, so far as it is not inconsistent with the provisions so re-enacted, continue in force and be deemed to have been made or issued under the provisions so re-enacted, unless and until it is superseded by any appointment, notification, order, scheme, rule, by-law or form, made or issued under the provisions so re-



enacted." So reading section 27 with this section it follows that the appointments, rules, by-laws made under the old Act remain in force until they are superseded by appointments, rules or by-laws made under the new Act. The provisions which this section makes are these:—

(1) All municipalities constituted under any repealed Act are to be deemed to have been constituted under this Act; see sec. 8 of B. M. Act

(2) Commissioners, Chairman, Vice-Chairman appointed or elected and committees established under the old and repealed Act are to be considered to have been duly appointed, elected or established under the new Act and they will continue in office until new appointments or elections are made under this Act.

(3) The limits of the municipalities as defined under the old Act are to be taken to have been defined under this Act.

(4) All appointments, rules, by-laws and orders duly made under the old Act are to be considered to have been duly made under this Act and so long as they are not repealed by new rules, by-laws or orders they will remain in force (see sec. 2 of B. M. Act)

(5) Licences granted under the old Act are to be considered to have been granted under the new Act and they must be valid for the period for which they have been granted

(6) Notifications and notices issued under the old Act shall be considered to have been duly issued under the new Act and actions taken under them will be considered valid and legal (See corresponding sec. 2 of B. M. Act).

(7) All taxes and rates imposed under the old Act will be considered to have been imposed under the new Act and will be payable and realisable till new taxes and rates are imposed (See sec. 7 of B. M. Act); so also proceedings taken under the old Act will be deemed to have been taken under the new Act.

The section cannot make valid a by-law which was originally invalid if the by-law was one not authorised by the old Act and so *ultra vires* this section cannot make it *intra vires*. *Benimadhab Nag vs. Motilal Das*, 21 Calcutta 887.

See notes to sec. 354 where this ruling is quoted in extenso.

A by-law must also conform with the provisions of enactment under which it purports to be made. *Narayan Chandra Chatterji vs. Corporation of Calcutta*, 10 C.L.J. 625.

The word "notification" in sec. 2 of Bengal Act III of 1884 included an order made under sec. 284 of Bengal Act V of 1876 (the Act repealed by Act III of 1884); an order therefore made and notified under sec. 284 of Bengal Act V of 1876 extending the provisions of Chapter VII of the Act was, under the provisions of sec. 2 of Bengal Act III of 1884, to be deemed to have been made and notified under the provisions of the Act of 1884; and a violation of a prohibitory order made by a municipality under sec. 282 of the old Act which applied to the area by virtue of the old notification was held punishable under the new Act even though at the time of the prosecution there was no prohibitory order and notification under the new Act. *Bykuntha Nath Das vrs. Lalit Mohan Sarkar*, 20 Calcutta 699 (F. B.) In that case it was held (at page 708 by Mr. Justice Piggot and Mr. Justice Hill who made the reference), "that the general scope of sec. 2, B. M. Act pointed to the intention that the system of municipal administration prevailing in the mofussil municipalities at the time the Act was passed should continue in force as it then existed; and should do so in virtue of the provisions of this section: and a very large part of this system depended upon the extension to numerous municipalities of this section of the old Act which corresponded with the sections contained in Part VI of the present, and of the machinery in operation under those sections."

Where a person was tried for and convicted of a breach of certain by-laws purporting to have been duly passed by a municipal board it was held that the presumption was that such by-laws had been passed with due regard to the necessary procedure and were not illegal and that it lay upon the accused to object to their validity. *Queen-Empress vrs. Ram Chandra*, 19 Allahabad 498.

A by-law prohibiting the covering of public drains had been passed under one Act and was replaced by a similar by-law made under the succeeding Act (which repealed the former Act); the accused covered a drain during the subsistence of the earlier by-law and was charged with having committed an offence under the latter by-law and he contented by way of defence that he could not be convicted in as much as the act complained of had been committed before the passing of the Act under which the complaint was made; he was convicted and the conviction was upheld; and it was held that a by-law similar in terms to that under which the accused had been convicted having been in existence under the then Municipal Act at the time when the accused first covered the drain in question, the liability then incurred by him continued under the General Clauses Act (Madras) unaffected by the passing of the present Municipal Act. *Poli Manam Pillai vrs. Chairman, Municipal Council, Ootacamund*, 28 Mad. 218.

Pending proceedings commenced under any repealed Act are to be deemed to be commenced under the new Act but though commenced before the passing of the new Act they must to be effectual be continued under the provisions of the new Act, and can only be used to enforce rights and powers in existence at the time when it is sought to enforce them. Accordingly when proceedings were begun under the old Act and the new Act prescribed a totally different procedure, and they were nevertheless continued according to the old Act, it was held that the proceedings were bad; the old Act being repealed the old procedure could not be continued. *Corporation of Calcutta vrs. Jadu Nath Mullick*, 21 Cal. 528.

Rules passed under a repealed Act and continued under a new Act are subject to the provisions of the new Act (as to procedure and to persons by whom complaints are to be made). *Queen Empress vrs. Yusuf Khan*, 8 All 677.

Passing of property, rights and liabilities to Commissioners of municipalities constituted under Act.

**392. All property, all rights of whatever kind used, enjoyed or possessed by, and all interests of whatever kind owned by, or vested in, or held in trust by or for, the Commissioners of a municipality constituted under the Bengal Municipal Act, 1884, as well as all liabilities legally subsisting against the said Commissioners shall pass to the Commissioners of the municipality as constituted under this Act.**

#### NOTES

The section is based on sec. 4 of B. M. Act.

The properties, rights, interests and liabilities of the Commissioners existing at the time of the new Act, will pass to the Commissioners elected under the new Act.

Recovery of sums due at commencement of Act.

**393. All rates, taxes, payments by way of composition for a rate or tax, and all sums of money otherwise due to the Commissioners at the commencement of this Act may be recovered as though they had accrued under this Act.**

#### NOTES

This section is based to some extent on sec. 7 (2) of B. M. Act.

Monies due to the Commissioners at the commencement of this Act whether as arrear rates, taxes or otherwise shall be recoverable under the

provisions of this Act (viz. sec. 864 and secs. 128 to 180) as if they had occurred under this Act.

Vacation of office by existing Commissioners. Vice-chairman and Chairman.

**394. Notwithstanding anything contained in Chapter II, the terms of office of the Chairman, Vice-Chairman and Commissioners holding office under the Bengal Municipal Act, 1884, shall expire on such date or dates, not later than one year after the commencement of this Act, as the Local Government shall determine, and the Local Government shall make appointments and cause a register of voters to be prepared by the aforesaid Commissioners, and arrangements for election to be made under this Act so that the newly elected and appointed Commissioners may come into office on the date fixed for the retirement of the former Commissioners:**

**Provided that the Chairman and Vice-Chairman elected or appointed, under the Bengal Municipal Act, 1884, shall continue in office until a new Chairman has been elected or appointed under this Act, and shall then vacate office.**

### NOTES

The section is based to some extent on the 1st part of sec. 7 and secs. 26 and 26 A of B. M. Act.

Chapter II deals with the creation and government of municipalities, the appointment of Commissioners, qualification of voters, election of Chairman, Vice-Chairman and the tenures of their office, rules as to the conduct of business within the municipalities. The tenure of office of Chairman, Vice-Chairman or Commissioners was 3 years under secs. 21 and 24 of B. M. Act.

Under this section the Local Government has to fix a date or dates on which the terms of office of the Chairman, Vice-Chairman and Commissioners will expire and this date must be within 1 year from the date of the commencement of this Act. The Local Government has also to appoint officers to help the Commissioners in preparing a register of voters and making arrangements for holding an election in such time that the new Commissioners may come into office on the date the old Commissioners retire. But the old Chairman and Vice-Chairman will continue in office until new Chairman and Vice-Chairman are elected (under sec. 20) or appointed under sec. 21 of this Act.

Provisions for exercise of extraordinary powers.

395. At any time within one year after the commencement of this Act the Local Government, or the Commissioners at a meeting with the previous sanction of the Local Government, may take such action, consistent so far as may be with the provisions of this Act, as may in the opinion of the Local Government be necessary for the purpose of newly constituting any new or Commissioners or bringing the provisions of this Act into force for the first time.

### NOTES

This is a new section with no corresponding provision in the B. M. Act

Under sec. 394 the Commissioners, Chairman or Vice-Chairman have to vacate their offices within one year from the date of the commencement of this Act; and the date has to be fixed by the Local Government, but if for some reason or other arrangements cannot be made for holding an election under the new Act and new Commissioners cannot be elected within the time; the old Commissioners have to carry on the municipal administration for the period during which new Commissioners are not elected, the Local Government or the Commissioners at a meeting with the previous sanction of the Local Government may take action consistent with this Act for the purpose of constituting a body of new Commissioners or for bringing into force the provisions of this Act for the first time

This section seems to meet a contingency like this, when new Commissioners cannot be elected to come into office immediately on the retirement of the old Commissioners then for the period between the termination of office of the old Commissioners and the new election there will be no Commissioners and so for continuing the municipal administration and to constitute a body of Commissioners (not elected under the new Act) to carry on the works during such period, the Local Government or the old Commissioners at a meeting with the previous sanction of the Local Government may constitute a body of Commissioners to carry on the municipal works till new Commissioners are elected or appointed under this Act, or bring the provisions of this Act into force for the first time.

The arrangement of constituting a body of new Commissioners under this section can last at most for one year only after the commencement of this Act; as the old Commissioners, Chairman, Vice-Chairman are bound to vacate their offices within 1 year of the commencement of this Act (vide sec 394).

## THE FIRST SCHEDULE.

[See Sections 82 (1) (f) and 187.]

## TAX ON VEHICLES, HORSES AND OTHER ANIMALS.

	Per quarter. Rs. As.
For every motor car of not less than twenty-five horse power used for the conveyance of human beings ...	10 0
For every motor car of less than twenty-five but not less than twelve horse power used for the conveyance of human beings ... ..	6 0
For every motor car of less than twelve horse power used for the conveyance of human beings ... ..	4 0
For every motor lorry ... ..	15 0
For every motor tricycle ... ..	8 0
For every motor bicycle ... ..	2 0
For every side car ... ..	1 0
For every four-wheeled vehicle drawn by two horses ...	5 0
For every four-wheeled vehicle other than those specified above ... ..	2 8
For every two-wheeled vehicle including a <i>shampani</i> , but excluding a bicycle ... ..	2 0
For every <i>jinrickshaw</i> ... ..	1 0
For every horse other than a pony ... ..	2 0
For every pony, mule or donkey ... ..	1 0
For every elephant ... ..	6 0
For every camel ... ..	2 0

**THE BIHAR AND ORISSA MUNICIPAL ACT, 1920**

**THE SECOND SCHEDULE**

[ See Section 2 (1). ]

**ENACTMENTS REPEALED**

YEAR	No.	Short Title	Repeal
1885	VII	The Bengal Municipal (Slaughter-houses and Meat-markets) Act ... ..	The whole.
1884	III	The Bengal Municipal Act ... ..	The whole.
1885	I	The Bengal Ferries Act ... ..	Section 4.
1886	III	The Bengal Municipal (Amendment) Act	The whole.
1891	II	The Calcutta Hackney-Carriage Act.	The whole.
1894	IV	The Bengal Municipal (Amendment) Act	The whole.
1896	I	The Bengal Municipal (Amendment) Act	The whole.
1910	II	The Bengal Municipal (Amendment and Validation) Act ... ..	The whole.
1920	III	The Bihar and Orissa Municipal (Sanitary Officers) Act ... ..	The whole.

**THE THIRD SCHEDULE**

[ See Section 2 (2). ]

**ENACTMENTS AMENDED**

YEAR	No.	Short title	Amendments.
1885	I	The Bengal Ferries Act.	<p>In section 85—</p> <p>(1) for the words " shall be managed by such District Board " substitute the words " or situated, within or adjacent to the limits of any Municipality, shall be managed by such District Board or by the Commissioners of such Municipality as the case may be "; and</p> <p>(2) for the words " District Fund " substitute the words " District or Municipal Fund as the case may be."</p>

# APPENDIX

## PART I.

### RULES & ORDERS UNDER THE ACT





*The 13th February, 1923.*

No. 1970-L.S.-G.—In exercise of the powers conferred on them by section 19 of the Bihar and Orissa Municipal Act, 1922 (Bihar and Orissa Act VII of 1922) the Government of Bihar and Orissa in the Ministry of Local Self-Government are pleased to make the following rules:—

**ELECTION RULES FOR MUNICIPALITIES IN BIHAR AND ORISSA FRAMED UNDER SECTION 19 OF THE BIHAR AND ORISSA MUNICIPAL ACT, 1922.**

Short title. 1. These rules may be called the Bihar and Orissa Municipal Election Rules.

**DEFINITIONS.**

Definitions. 2. In these rules, unless there be something repugnant in the subject or context,

- (a) "The Act" means the Bihar and Orissa Municipal Act, 1922.
- (b) The term "the Magistrate" has the meaning defined by section 8, sub-section (12) of the Act.
- (c) A "general election" means an election held under section 894 of the Act, prior to the expiry of the term of office of existing commissioners and thereafter on the expiry of the term of office of the commissioners under section 20.
- (d) A "by-election" means an election held under section 80 of the Act.
- (e) "Returning Officer" means such Magistrate of the first or second class as the District Magistrate may appoint in this behalf.
- (f) A person shall be deemed to be resident within the limits of a municipality if he—
  - (1) ordinarily lives within those limits; or
  - (2) has his family dwelling-house within those limits, and occasionally visits it; or
  - (3) maintains within those limits a dwelling-house ready for occupation in the charge of servants, and occasionally occupies it.

EXPLANATION.—A person may be resident within the limits of more than one municipality at the same time.

**PRELIMINARY.**

Discharge of duties of Chairman under these rules.

3. The duties assigned to the Chairman under the following rules may be discharged by the Vice-Chairman if the Chairman by an order in writing so direct:

Provided that, if in any case such a course appear to the Local Government to be necessary, it may direct that the Magistrate shall perform all or any of the duties assigned by the following rules to the Chairman or the commissioners at a meeting.

**Date of election.** 4. (1) Subject to the provisions of section 304 of the Act, the Magistrate shall fix the date of the first general election under the Act, and of any subsequent general election or by-election.

(2) The date so fixed shall be notified by the Magistrate in the *Bihar and Orissa Gazette* and shall be communicated to the Chairman who shall cause the notification to be published within the municipality in the manner prescribed in section 356 of the Act.

**Date for determination of qualifying period.** 5. In accordance with the provisions of clause (a) of sub-section (2) of section 15 of the Act, the Chairman shall fix a date for the purpose of determining the period during which a person shall have paid municipal taxes or fees so as to be entitled to be registered as a voter.

#### OF THE PREPARATION OF THE ELECTORAL ROLL.

**Preparation of electoral roll.** 6. (1) The Chairman shall appoint a person to prepare a roll, called the electoral roll, in the form shown in Schedule I, of all persons entitled to be registered as voters in the municipality or, if the municipality is divided into wards, of all persons entitled to be registered as voters in each such ward, and shall appoint such number of assistants as he may deem necessary and shall pay to such person and his assistants such fees as may be determined by the commissioners at a meeting.

(2) If the municipality is divided into wards, the commissioners at a meeting shall determine in which wards persons who are entitled to be registered as voters under clause (a) of sub-section (2) of section 15 of the Act by reason of the payment of municipal taxes or fees, other than any tax assessed on the annual value of holdings, but who are not resident within the municipality shall be registered.

**NOTE.**—This rule is necessary because residence in the municipality is not a necessary qualification under clauses (a); thus persons who have paid fees for the registration of carts are frequently not resident within the municipality but are entitled to vote. It is suggested that the commissioners should pass an order that voters resident in village A. and B. should be registered in Ward I, those resident in C. and D. in Ward II, and those resident in any other place in Ward III, etc. Persons who though not resident are entitled to vote by reason of the payment of any tax assessed on the annual value of holdings shall be registered in the ward in which the holding in respect of which the tax is paid is situated.

**Arrangement of names.** (3) (a) If the municipality is divided into wards, a separate electoral roll shall be prepared for each ward.

(b) The electoral roll for each ward or for the whole municipality if it is not divided into wards, shall be prepared in three parts, viz., Part A, containing the names of persons entitled to be registered as voters under clause (a) of sub-section (2) of section 15 of the Act; Part B, containing the names of persons entitled to be registered as voters under clause (b); and Part C, containing the names of persons entitled to be registered as voters under clause (c).

(c) The name of any person entitled to be registered under the three clause (a), (b) and (c) or under both clauses (a) and (b) or under both

clause (a) and (c) shall be entered in a Part A. The name of any person entitled to be registered under both clauses (b) and (c) shall be entered in Part B.

(d) In each part of each electoral roll the names shall be arranged alphabetically according to the English alphabet, and according to surnames, and according to other names, if there is more than one voter with the same surname.

(e) Each electoral roll shall be prepared in the vernacular of the district.

**Delivery of electoral roll.** (4) The person appointed under sub-rule (1) to prepare the electoral roll shall make, sign and deliver to the Chairman such electoral roll or rolls not less than 120 days before the date fixed for the general election.

**Procedure in preparation of rolls.** (5) In the preparation of an electoral roll the following procedure shall be observed:—

- (i) The roll of persons eligible to vote under clause (a), subsection (2) of section 15 of the Act, shall be compiled from the registers maintained in the municipal office.
- (ii) The roll of persons who are eligible to vote under clause (b) of sub-section (2) of section 15 shall be compiled from a list to be supplied by the Collector.
- (iii) The Chairman shall cause notices to be published by beat of drum in the municipality and if he considers it desirable by advertisement in the newspapers, and, to be posted at the municipal office and at other places within the municipality inviting all persons who claim to be eligible to vote under clause (c) of sub-section (2) of section 15 of the Act, to submit applications to the municipal office before a date to be specified in the notice. Such date shall be not less than 15 days from the date of the publication of the notice at the municipal office. All such applications shall be in writing and shall contain the following particulars:—

- (a) Name and father's name of applicant.
- (b) Qualification on which the claim is based.
- (c) Number and description of holding in which applicant resides.

The application shall be accompanied by such documents in support of the application as the applicant may deem necessary.

The person or persons authorized to prepare the electoral roll may require any such applicant to produce further evidence either oral or documentary in support of his application.

**Comparison of entries with registers.** (6) Where any roll has been prepared from a register maintained in the municipal office each entry shall contain a reference to the item in the register on which it is based.

**Publication of draft roll.** 7. (1) Not less than ninety days before the date fixed for the election, the Chairman shall cause copies of the electoral roll or rolls, as prepared and delivered to him under the preceding rule, to be posted at the municipal office and at such other places as the

commissioners at a meeting may from time to time prescribe, and to be kept so posted for twenty days from the first date of such publication: provided that if the municipality is divided into wards, a copy of the electoral roll for each ward shall be posted in the manner above described in some conspicuous place in the ward to which it refers.

**Proclamation of publication.** (2) The Chairman shall also cause to be proclaimed by beat of drum in each ward, and by notices posted throughout the municipality, and if he considers it desirable by advertisement in the newspapers the fact that the electoral roll or rolls has or have been prepared, and that copies of them can be inspected either at the municipal office at or other specified places.

**Claims and objections to entries in draft roll.** (3) (a) Every person whose name is not entered in the electoral roll or rolls and who claims to have it inserted therein, or any person whose name is on the roll and who objects to the inclusion of the name of any person or persons in the electoral roll, shall, within twenty days after the publication of the electoral roll under clause (1) of this rule, give notice in writing of his claims or objections to the Chairman or to some person duly authorized in this behalf by the Chairman stating therein the qualifications on which the claims are based or the reasons for which the objections are made; and the Chairman shall publish the claims or objections by posting up a list of the claimants and of the persons objected to in the ward, if there be any, in respect of which the claims are made, or if there be no wards in conspicuous places throughout the municipality and in the municipal Office, and by keeping the list so posted up for a period of seven days from the date next following the last day for giving notices of claims or objections.

(b) Each person making a claim or objection shall do so on a separate petition which shall be presented either by the claimant or objector in person or by an agent duly authorized by him in this behalf and holding a valid power-of-attorney.

**Revising committee.** 8. (1) A revising committee shall be constituted for the municipality, or, if the municipality is divided into wards and the District Magistrate shall so direct, a separate revising committee may be constituted for each ward or for one or more wards of the municipality.

(2) Each revising committee shall consist of:—

- (a) a Magistrate appointed by the District Magistrate as President;
- (b) a tax-payer appointed by the District Magistrate; and
- (c) a tax-payer appointed by the Commissioners at a meeting.

(3) The revising committee shall hear all claims and objections filed under clause (3) of rule 7 in respect of the whole municipality or in respect of the ward or wards for which the said revising committee has been constituted in open sitting within twenty days after the last date for publishing the list of claimants and objections under clause (3) of rule 7, at a time and place to be determined by the said revising committee.

(4) The Chairman shall publish at the places fixed under clause (1) of rule 7 for the publication of the electoral roll a notice showing the time and place at which the revising committee will sit, and shall cause a copy of the notice to be served on each person who has lodged a claim or objection or

against whom an objection has been lodged. Such notice shall be published and served at least three days before the date fixed for the sitting of the revising authority but omission or failure to serve the notice shall not invalidate the proceedings of the revising committee.

(5) The claims and objections shall be decided by the majority of votes of the revising committee, provided that if one member of the revising committee is absent at the time of the decision of any claim or objection, such claim or objection may be decided by the remaining members and the president shall have a second or casting vote.

Power of revising committee to make corrections *suo motu*

(6) If at any time before the close of the last day on which it may sit, the revising committee sees reason to believe that there are any omissions from an electoral roll other than those in respect of which claims have been made, or that there are any entries in an electoral roll other than those in respect of which objections have been made, which should be removed or corrected, it may, after causing such notice as it may consider reasonable to be given to the persons affected, and after making such inquiry as it may deem necessary, order that such omissions or entries be supplied or removed or corrected.

Entry of name in two or more electoral rolls.

9. (1) If a municipality is divided into wards, the Chairman shall cause the electoral rolls of the several wards to be compared and a list to be pared to voters who names are entered in more than one roll.

(2) The list prepared under clause (1) shall be submitted to the revising committee constituted for the municipality or if there is more than one revising committee, to the revising committee constituted for the ward in which the municipal office is situated and the said revising committee shall call on any person whose name is entered in more than one electoral roll to choose, and if he does not choose, shall order in which electoral roll his name shall stand.

Decision of Revising Committee.

10. (1) The orders made by the revising committee shall be in writing and shall be final.

Corrections of draft electoral roll.

(2) All orders passed by the revising committee shall be notified by them to the Chairman who shall immediately on receiving the notice:—

- (a) cause to be inserted in, or remove from, the electoral roll and all copies thereof the name of the person affected by the correction, or make any other amendment or correction which may be ordered;
- (b) certify in the electoral roll and all copies thereof the fact that the correction has been enjoined by the revising committee and subscribe his name to that certificate; and
- (c) give notice to the person affected that the correction has been made.

Final electoral rolls.

11. (1) The electoral roll or rolls made and revised under the preceding rules shall be the final electoral roll and copies thereof shall be posted up at the municipal office and at the places prescribed under clause (1) of rule 7 at least twenty days before the date fixed for the election.

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(3) Every person whose name is entered in the final electoral roll shall be deemed to be registered as a voter and shall be entitled to vote at an election. No person whose name is not so entered shall vote at such election.

**OF THE QUALIFICATION AND NOMINATION OF CANDIDATES.**

Notice of particulars of election, 12. At least thirty days before the election the Chairman shall publish over his signature, in the manner prescribed by clause (1) of rule 1, a notice containing the following particulars:—

- (a) the number of persons to be elected;
- (b) the days on which nominations may be made; and
- (c) the hours during which and the place where, if there be a poll the votes of the voters of each ward will be taken.

Qualification of candidates. 13. Any person entitled to vote under these rules shall be qualified to be elected as a commissioner.

Nomination of candidates. 14. (1) Every person who is a candidate for election shall be nominated by a separate nomination paper in the form shown in Schedule II, with the necessary particulars entered in columns 2, 3, 4 and 5, and supported by the signatures, in columns 6, 7 and 8, respectively, of two voters of the ward in which he proposes to stand, who propose and second his nomination respectively, and of eight voters in such ward who approve his nomination.

(2) If any person has been nominated in respect of more than one ward, only one such nomination paper shall be valid. The Returning Officer shall call on every such person to choose, and if he does not so choose shall order in which ward he shall be deemed to have been validly nominated.

Nomination papers. 15. (a) The same voters or any of them may subscribe any number of nomination papers not exceeding the number of vacancies in the ward, if any, in the electoral roll of which they are registered.

(b) If a voter signs nomination papers for a number of persons exceeding the number of vacancies, his signature on all such papers shall be cancelled by the Returning Officer and if such cancellation has the effect of reducing the number of signatures below the number prescribed in rule 14, the nomination paper shall be deemed invalid.

Delivery of nomination papers. 16. (1) The Chairman shall fix a date to be the last day for the delivery of nomination papers, such date not to be less than fifteen days before the date fixed for the election and not to be a public holiday under the Negotiable Instrument Act, 1881.

(2) Every nomination paper subscribed as aforesaid shall be delivered by the candidate or by his proposer or seconder to the Chairman, or to some person duly authorized in writing by the Chairman in this behalf, at the municipal office, on any day during the hours when the municipal office is open for the disposal of business and not later than 4 p.m. of the last day fixed for the delivery of such papers under sub-rule (1) of this rule.

Publication of  
Nomination papers.

17. As soon as may be after the nomination papers have been delivered, the Chairman shall prepare lists of all nominations in the form shown in Schedule III, which shall be posted up at the places prescribed by clause (1) of rule 7 for the publication of the electoral roll.

Returning Officer  
to decide validity of  
nomination papers.

18. The Returning Officer shall attend at the municipal office on the day next after the last day fixed for delivery of nomination papers for a sufficient time after the hour of 11 o'clock in the forenoon, and shall decide on the validity of the nomination papers. The only ground on which a nomination paper may be declared invalid shall be that the candidate is not qualified for election or that all or any of the provisions of rules 18 to 16 have not been complied with.

Attendance before  
nomination officer.

19. Each candidate and his proposer and seconder, but no other person, shall be entitled to attend the proceedings before the Returning Officer.

Nomination officer's  
decision final.

20. The decision of the Returning Officer shall be given in writing, and shall be final.

Nomination officer  
to notify Chairman.

21. The Returning Officer shall notify his orders to the Chairman.

Nomination when  
valid  
to be a valid nomination.

22. Every nomination which has not been declared by the Returning Officer to be invalid shall be deemed to be a valid nomination.

List of candidates.

23. The Chairman shall prepare for each ward, if any, and otherwise for the whole municipality, a list, alphabetically arranged, of the candidate for election whose nominations are valid and who have not withdrawn from their candidature and shall assign to each candidate a serial number. The list shall be in the form shown in Schedule III.

Publication of list.

24. Not less than ten days before the date fixed for the election the list prepared under the preceding rule shall be posted at the places prescribed by clause (1) of rule 7 for the publication of electoral roll.

#### OF THE TIME, PLACE AND MANNER OF HOLDING ELECTIONS.

Time and place of  
election

25. The hours during which, and the place or places where, if there be a poll, the votes of the voters will be taken in a municipality shall be determined by the Magistrate.

Admission into  
polling station.

26. After the hours mentioned in the notice published under rule 12 no voter shall be admitted into the building or enclosure within which the election proceedings are being held, but the votes of all duly registered voters who are already within the building or enclosure shall be taken.

Poll when to be  
taken.

27. (1) If the number of candidates who are entered in the list prepared under rule 23 and who have not withdrawn their candidature before the time fixed for the commencement of the poll exceeds that of the vacancies, a poll shall be taken on the day fixed for the election in the manner provided in these rules.



(2). If the number of such candidates is equal to or less than the number of vacancies all such candidates shall be deemed to be elected.

**Distribution of votes.** 28. (1) Each voter shall be entitled to vote for the ward in the electoral roll of which his name is registered as a voter and for no other, and to give as many votes as there are vacancies for such ward.

(2) Where the municipality has not been divided into wards each voter shall be entitled to vote for as many candidates as there are vacancies in the entire number of commissioners.

(3) A voter may give all or any number of the votes to which he is entitled to any one candidate.

**Votes to be given in person.** 29. All votes must be given in person at the polling station, and no votes will be received by proxy.

**Polling officer.** 30. The Magistrate shall appoint a polling officer to preside at each polling station and as many assistants as he may deem necessary; the polling officers and assistants shall be persons who are not themselves candidates for election and not servants of the commissioners and shall if possible be persons who are acquainted with, and therefore able to identify, the voters or the greater number of them.

31. (a) The Chairman shall provide at each polling station one ballot box for each candidate, and shall cause to be inscribed thereon legibly in the vernacular the name or number of the ward, the name of the candidate and the number assigned to him under rule 23.

(b) The list referred to in rule 23 shall be published at each polling station not less than 48 hours before the hour fixed for the commencement of the poll, and copies thereof in the vernacular shall be kept posted till the close of the poll at conspicuous places in and near the polling station and in the room or place in which the ballot boxes are placed.

(c) Each ballot box shall be provided with a lock and key and shall be so constructed that voting papers may be placed therein but cannot be withdrawn without the box being unlocked.

(d) The polling officer shall just before the commencement of the poll show the ballot boxes empty to such persons, if any, as may be present at the polling station and shall then lock and seal them in such manner as to prevent their being opened without breaking the seals and shall keep them so locked and sealed.

(e) As many ballot boxes as there are candidates shall be placed in a room or space so screened off that the ballot boxes may be visible only to the polling officer and his assistants and to the persons voting.

**Name and address of voter to be given to polling officer.** 32. On the date of the election, each intending voter shall, as he arrives at the place appointed for holding the election, go to the polling officer in charge of the ward and mention in full his name and residence.

**Duty of polling officer.** 33. (a) The polling officer shall ascertain that the name of the voter before him appears on the electoral roll and that he has not already voted at the election and shall satisfy himself as to the identity of the voter, by questioning any municipal officer or servant or other person or in such manner as he thinks fit,

(3) The polling officer shall then mark with the official mark and hand to the voter as many ballot papers as there are vacancies in the ward or in the municipality if it is not divided into wards, to fill which the election is being held and shall record on the counterfoil of the ballot papers the number of the voter as given in the electoral roll. He shall also place on the electoral roll a mark to show that ballot papers have been given to the voter but without showing the particular ballot papers which have been given.

Effect of refusal to give answer to questions.

34. No voting paper shall be given by the polling officer to any person who declines to answer any reasonable question put to him for the purpose of identification or whose identity is not established to his

satisfaction.

Procedure by voter.

35. The voter shall then take the ballot papers or paper given to him to the place where the boxes mentioned in rule 31 are kept and shall drop all or any of them, into any such box or boxes, which is or are, meant for the candidate or candidates for whom he wishes to vote. If, however, the voter does not desire to drop all or any of the ballot papers given to him into any of the boxes he shall return the same to the polling officer, who shall endorse the same over his initials with the words, "Returned ballot paper."

Close of polling.

36. The polling officer of each station, as soon as practicable after the close of the poll, shall seal up each ballot box and shall seal up also the slit for the reception of votes and shall also place in a sealed packet the counterfoils of the ballot papers, the returned ballot papers and the marked copy of the electoral roll and shall place the said ballot boxes and the said sealed packets in such custody as the Magistrate may direct.

Counting of votes.

37 (1) The votes shall be counted at the municipal office on a day and at an hour to be fixed by the Magistrate.

(2) The Magistrate or one of the polling officers authorized by him in this behalf shall attend at the municipal office on the day and at the hour fixed under clause (1) and shall preside at the meeting for the counting of votes.

(3) Each of the polling officers shall also attend at the meeting. The commissioners and the candidates for election may also attend at the meeting but no other person shall be present at the meeting, except with the permission of the president.

(4) The Magistrate shall cause the ballot boxes to be produced at the meeting and if he is not himself president to be handed to the president of the meeting.

(5) The president shall open each ballot box and count and record the number of ballot papers and may appoint to assist in the counting of ballot papers such persons not being themselves candidates for election or the agents of such candidates as he may deem necessary.

(6) Any ballot papers not marked with the official mark or bearing any mark by which the voter may afterwards be identified shall be invalid and shall not be counted.

(7) The president of the meeting shall endorse "Rejected" on any ballot paper which he may reject as invalid and the reasons for such rejection. His decision shall be final.

(8) When there is found to be an equal number of voters for two or more candidates for one vacancy the election shall be made by lot in such manner as the president of the meeting may determine.

**Publication of list of elected candidates.** 38. (1) After the scrutiny and counting of votes has been completed, the president of the meeting shall prepare a list of duly returned candidates, including candidates deemed to be elected under rule 27 (1) and shall publish it over his signature at the municipal office.

(2) The list of duly returned candidates shall within three days after the declaration of the result of the election be submitted by the president of the meeting to the District Magistrate who shall forward it to the Commissioner of the Division for publication by him in the *Bihar and Orissa Gazette*.

Provided that, if the Magistrate, on his own initiative, or on being moved in this behalf within the period aforesaid, for reasons to be recorded in writing, orders a recount of the voting papers, he shall not forward the list referred to above until the result of such recount is reported to him.

#### CUSTODY AND DESTRUCTION OF VOTING PAPERS AND THEIR COUNTERFOILS.

**Custody of voting papers.** 39. When the voting papers and their counterfoils have been counted and scrutinized they shall be replaced in the box from which they were taken and the box, after being locked and sealed with the municipal seal, shall be kept in the municipal office in safe custody till they are destroyed in the manner hereinafter provided.

**Destruction of voting papers.** 40. On the expiry of thirty days—

(1) from the date of the Gazette in which the result of election is published, or

(2) from the date on which any proceedings in a Civil Court in respect of such election are finally disposed of, if a notice thereof has been received by the Chairman from any of the parties interested therein or from the Court,

the voting papers together with the counterfoils shall be destroyed in the presence of such officer as the Chairman may appoint for this purpose.

#### By-Elections.

**By-election.** 41. On a vacancy occurring in the municipality between two general elections, it shall be reported without loss of time by the Chairman to the Magistrate who shall fix a date, as soon as conveniently may be, for the holding of the election to fill the vacancy. The above rules shall apply, with such modifications as may be deemed necessary by the Magistrate, to such by-elections.

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**final**

**Municipal officers  
and servants not to  
participate in election.**

**Any breach of t**

elections, or taking any other necessary action under these rules, shall be payable by the commissioners out of the municipal fund. In the case of a newly-created municipality, in which no municipal fund has been formed, the Magistrate of the district shall advance such sums as may be required, and such sums shall be recoverable from the municipal commissioners within six months.

**Secretary to Government**

**[RULE 6.]**

## PART A.

Serial No.	Name of voter.	Father's name.	Address.	Total of Municipal taxes or fees paid	Number in the assessment list or other register	Remarks.
1	2	3		5	6	7

PART B

Serial No.	Name of voter.	Father's name.	Address.	Remarks.
1	2	3	4	5

PART C

Serial No.	Name of voter.	Father's name.	Address.	Number of holding in which resident.	Qualifications.
1	2	3	4	5	6

## SCHEDULE II.

[RULE 14.]

Nomination paper for the.....ward of the.....municipality.

Serial No.	Name of candidate, and father's name.	Address.	Particulars of qualification as an elector.	Ward in which election is sought	Signature of voter proposing.	Signature of voter seconding.	Signature of eight voters supporting.	Serial number of candidate as a voter in the electoral roll (Schedule I).	Remarks.
1	2	3	4	5	6	7	8	9	10

N.B.—Columns 1 and 9 be filled up in the municipal office

## SCHEDULE III.

[RULES 17 AND 23.]

List of candidates whose nominations have been declared valid and who have not withdrawn their candidature in  
 nominations  
 Ward.....of the.....municipality.

Serial No	Name.	Father's name.	Address.	Particulars, of qualification
1	2	3	4	5

## SCHEDULE IV.

## BALLOT PAPERS.

( Rule 83.)

COUNTERFOIL.	BALLOT PAPER.
Book Number.	<i>Front.</i>
Serail Number.	Name or number of Ward.
Name of Municipality.	Official Mark.
Name or number of Ward.	<i>Back.</i>
Number of voters on electoral roll	
Part_____	Book Number_____
Number_____	Serial Number_____

Note.—(1) With each counterfoil there will be as many ballot papers as there are vacancies in the ward. All the ballot papers attached to the same counterfoil will bear the same serial number as the counterfoil.

(2) The book number, serial number, name of Municipality and the name or number of the ward will be inserted on the counterfoil and the book number and serial number on the ballot paper before the polling commences. The number of the voters on the electoral roll will be inserted by the polling officer or his assistants at the time of handing the ballot papers to the voter.

(3) The official mark will be stamped on the ballot paper at the time of handing the ballot paper to the voter.

*The Account Rules for Municipalities are about to be changed. A draft notification No. 8248 L. S. G., dated the 28th November, 1927, containing the new and revised account rules has been published in the B. and O. Gazette, dated the 7th December, 1927, and they are still under consideration; when they will be passed they will supersede the present account rules.]*

*The 4th August, 1928.*

No. 7455-L. S.-G.—In exercise of the powers conferred by section 168 of the Bihar and Orissa Municipal Act, 1922 (Bihar and Orissa Act VII of 1922) and in supersession of all previous rules the Government of Bihar and Orissa in the Ministry of Local Self-Government are pleased to make the following rules for the collection of taxes:—

### MUNICIPAL ACCOUNT RULES (RECOVERY OF TAXES).

#### *General.*

1. In municipalities in which there is a responsible paid Secretary any duties which are assigned to the Vice-Chairman in these rules may, under the written orders of the Chairman, be performed by the Secretary.

2. The general principle of the rules is that there shall be a Demand and Collection Register in which all changes in the demand are to be entered and in which the satisfaction of the demands by collection or remission is to be posted. For each officer entrusted with the collection of 'taxes' an account or ledger is to be kept in which he will be debited with the demand for the quarter as shewn in the Demand and Collection Register and credited with the collections and remissions. These accounts are to be closed and balanced monthly and the totals of the several accounts are to be brought together in the form of a Progress Statement to shew the state of the entire collections.

3. If there is a separate Assessment Department the Head Clerk or Accountant shall keep the Mutation Register and prepare the Progress Statement while the Collection Department shall deal with collections, remissions and warrants and post the settlement of demands in the Demand and Collection Register. The Sarkars who are employed on the actual work of collection shall not, however, be allowed to have access to the Demand and Collection Register. The Accountant or Head Clerk shall in every case check the remissions and the Progress Statement. If possible the Vice-Chairman shall so apportion the duties between the Head Clerk or Accountant and the Tax-Daroga as to provide for a cross check over the Collection Department.

#### DIVISION OF THE MUNICIPAL AREA INTO CIRCLES

4. The municipality shall be divided into collecting circles by a calculation based on the area of ground to be traversed and the number of holdings to be served. Each circle shall be numbered and a Sarkar shall be appointed in charge of one or more circles. The collecting circles shall be as compact as possible and so arranged as to distribute the work of collection evenly among the Sarkars. No collecting circle shall contain more houses than can be visited by one Sarkar during the working days of a month.

5. The circles having been determined and the assessment list prescribed by section 89 or 105 of the Act having been prepared, the registers



of the municipal taxes shall be opened, separate books being used for each circle.

6. The assessment list shall be kept in Form A and shall be carefully filed in guard files or in bound volumes.

7. Whenever a municipality levies a tax on holdings from owners and also a water lighting or latrine tax from occupiers a double set of registers shall be opened, i.e., one set for owners and the other for occupiers. When two or more taxes are chargeable to the occupier the necessary additional columns may be introduced in the forms and registers so as to avoid keeping separate set for each tax. If the names shown in the assessment list for latrine or other special tax do not differ in more than 5 per cent. of the cases from those shown in the assessment list for the tax on holdings, the municipal commissioners may, with the previous approval of the Examiner of Local Accounts, Bihar and Orissa, maintain only one set of registers, the name of occupier when different from that of the owner being entered in the Demand and Collection Register immediately below it.

8. When the tax on persons and the tax on holdings are both in force in the same municipality the collecting circles, if any, shall be so constituted as to make them coincident with the wards in which each tax is imposed. By this means there will be a complete division of the two taxes throughout the accounts but it may be found preferable to keep a separate progress statement, form L, for each tax.

9. The following is a list of the forms and registers which shall be kept:—

Assessment List	...	...	...	A
Demand and Collection Register (by circles)	...	...	...	B
Petition of objections against assessment or valuation	...	...	...	C
Petition Register (this may, if convenient, be kept by circles)	...	...	...	D
Mutation Register (by circles)	...	...	...	E
Remission Order	...	...	...	F
Remission Register (by circles)	...	...	...	G
Receipt Forms	...	...	...	H
Stock account of Receipt Forms	...	...	...	I
Sarkar's Daily Collection Register (by circles)	...	...	...	J
Sarkar's Ledger	...	...	...	K
Progress statement for entire demand	...	...	...	L
Register of warrants issued (this may, if convenient, be kept by circles)	...	...	...	M
Register of Distraints of property and sales	...	...	...	N
Notice of Demand	...	...	...	O

#### DEMAND AND COLLECTION REGISTER

10. The Demand and Collection Register shall be in Form B. A separate volume shall be assigned to each collecting circle. Columns 1 to 4 shall be filled up from the assessment list. Sufficient space shall be left between each name for entering revisions and spaces may also be left at the

and of each street or Mahalla or other convenient interval for the insertion of new holdings brought under assessment.

11. Column 4 of the Demand and Collection Register shall be totalled at least a month before the beginning of the 1st quarter of the year from which the revised assessment will take effect. The totalling may, if it be found convenient, be made by sub-divisions, but these subsidiary totals must be carried forward or summed on a separate page of the Demand Register, so as to arrive at the total of the circle. When the total has been struck, the Vice-Chairman, Secretary or a commissioner appointed for the purpose shall carefully compare the entries in columns 1 to 4 with the assessment list and with the orders of the commissioners of appeal under section 117 and shall sign the register in token of having made the comparison.

12. Any reduction allowed after columns 1 to 4 of the Demand and Collection Register have been written up but before column 4 has been totalled shall be entered in the assessment list and the entries in column 4 shall be corrected but all subsequent alterations shall be noted in columns 5 to 9 with reference to the orders of reduction or enhancement contained in the file of orders and the Mutation Register.

13. The Vice-Chairman shall see that the Demand and Collection Registers are free from erasures; no alterations shall be made in them except under the initials of the Vice-Chairman or other officer empowered to sign for him.

14. (1) The total originally struck in the Demand and Collection Register in accordance with Rule 11 shows the demand for the first quarter of the assessment. For subsequent quarters the demand shall be arrived at and agreement effected thus:—

Demand for 1st quarter...as per column 4 of Demand and Collection Register...Rs.

Add new and enhanced assessments ... ..

Total Rs.

Deduct remissions and reductions ... .. Rs.

Demand for the 2nd quarter of ... .. Rs.

and so on, from quarter to quarter, until the assessment is revised. These entries may be made in continuation of the original total struck in the Demand and Collection Register or they may be noted in an abstract on the opening page. The total of all the circles may also, if desired, be brought into one view in a separate abstract.

(2) If the percentage on the valuation at which the tax is levied is changed under section 104 of the Act during the currency of the assessment, the Demand Register shall be corrected in accordance with section 107 (1) (e) of the Act.

15. The Demand and Collection Register is the principal record of the Assessment Department and the officer in charge of the department shall be responsible for seeing that it is correctly prepared, and that all alterations therein are attested by the proper authority.

16. The register will require to be rewritten annually during the last quarter of each year. Careful comparison must then be made of the entries

relating to the assessment columns 1 to 4 in the old and new registers and the total of the first quarter brought out by addition shall be proved with the figure arrived at by adding to, and deducting from, the demand of the last quarter of the previous year, the increases and decreases in the Mutation Register. The Vice-Chairman shall sign the register in token that the agreement has been made.

#### PETITIONS.

17. Petitions against the assessment should, if possible, be presented in forms of a uniform pattern. Form C may be used for the purpose.

18. Petitions shall be registered in Form D by means of which the progress made in dealing with petitions shall be watched.

#### CHANGES IN THE DEMAND.

19. All permanent alterations in the demand, whether as increases by new assessments, or the enhancement of the existing assessment or as decreases by the cancellation or reduction of existing assessments, shall be recorded in the register or Mutations in Form E.

20. This register shall be written up from the orders passed by the revising authority and shall be totalled at the close of each quarter. The total of the increases shall then be added to the previous quarter's demand in the Demand and Collection Register and from the sum shall be deducted the total of the decreases so as to work out the demand of the ensuing quarter (*see* rule 14).

21. As soon as the revising order has been passed and registered, it shall be made over to the assessor or other officer in charge of the Demand and Collection Register, who shall correct the demand and shall give a certificate on the order to the following effect:—"Certified that the corrections in the demand directed by these orders have been entered in the Demand and Collection Register." The order shall then be placed in a file with the other orders of the same quarter.

22. As an alternative system the details of the order may be entered in Form E either in the column "Remarks" or in an additional column to be opened between the columns 6 and 7. The corrections in the Demand and Collection Register shall then be made with reference to the entries in the Mutation Register each of which shall be initialled by the officer making the correction; and the certificate in the form prescribed in rule 21 shall be given at the foot of the Mutation Register after it has been totalled.

23. The alteration in the demand to be entered in Form E will not be retrospective. If occasion for a retrospective addition to the demand arises, as for instance, by applying section 96 of the Municipal Act, it will be necessary to correct the opening demand of the current quarter but in view of the inconvenience to which such changes give rise, it is desirable to defer all increases in the assessment until the beginning of the next quarter.

#### RECEIPT FORMS.

24. When the tax is paid the Tax-Collector or Sarkar shall grant a receipt in Form H. The Sarkar shall fill up the form in duplicate by the carbon process and shall retain the duplicate copy. *Paid* payment of quarterly taxes shall not be accepted.

25. The forms shall be numbered consecutively for the year and shall be bound up in books of 100 duplicate forms each. Both the original and the duplicate shall bear the same number which shall be printed. The Vice-Chairman or the Secretary shall sign on the back of each receipt book, a certificate stating the number of forms contained in it. Only one book shall be given to a Sarkar at a time and until the book thus issued has been used up no new book shall be given out. Receipt forms should not generally be printed in a local firm. If in special cases they are printed in a local firm, particular care should be taken to see that extra forms may not be printed and used improperly by the collection staff.

26. If it is considered undesirable to empower Sarkars to sign receipts on behalf of the municipality the receipts shall be in triplicate of which one would be a temporary receipt signed by the Sarkar and printed with a caution that the tax-payer should complain to the Chairman or Vice-Chairman if the formal receipt signed by the proper authority did not reach the taxpayer in a reasonable time, say a week. The permanent receipt would be signed or stamped by the Chairman or Vice-Chairman after the Sarkar's accounts have been checked and delivered to the tax-payer in the course of the Sarkar's daily rounds. The third portion would be the counterfoil for record in the office.

#### REMISSION REGISTER

27. Every remission sanctioned shall be entered in a register in Form G. The period for which remission is granted shall always be clearly stated. If many remissions are granted by one order, either as a legal reduction on account of vacancy, etc., or to clear the accounts of irrecoverable demands, the amounts to be remitted shall be entered in remission orders in Form F.

The total of these lists shall be given both in words and figures when they are passed by the revising authority. Irrecoverable taxes shall be remitted periodically, say once in every quarter of a year, and not towards the close of the year when proper enquiry as to the merits of each case is rendered impossible owing to insufficiency of time.

28. All remission orders shall be serially filed in a guard book and an index to the file of remission order shall be kept in the Remission Register in Form G. Copies of the remission order shall be communicated to each Sarkar.

#### DAILY REGISTER OF COLLECTIONS

29. The Sarkar shall maintain a register in Form J, in which the details of collection of the day shall be entered and the total of each day's collection struck.

#### COLLECTION OF TAXES.

30. The tax shall be payable on the first day of every quarter of the year to which it relates. The Sarkar shall go round with a copy of the demand portion of the Demand and Collection Register and also with a bound book of receipt forms. As soon as the tax is paid he shall fill in the printed receipt and make over the original copy to the tax-payer. He shall at the same time note the fact of the payment against the demand in his copy of the Demand Register. The Sarkar shall return to the municipal office

either every day or, if permitted by the Vice-Chairman, every alternate day and shall deliver to the Tax-Daroga all the money he has collected, together with the Daily Collection Register, Form J, and the receipt book in his possession. The Tax-Daroga or his assistant shall check the account by comparing the credits with the duplicate of receipts, and after initialling the latter, he shall cursorily run through the books and see that there are no duplicates from which the original receipts are missing which have not been initialled by him or his assistant. He shall then total the register and see that it corresponds with the money given to him by the Sarkar and if all is in order he shall sign a certificate stating in both words and figures the amount actually received by him. The Tax-Daroga shall then post the amount received from each Sarkar into his cash book as provided in rules 14 and 15 of Account Rules.

81. Each case of collection or remission shall be posted daily in the Demand and Collection Register in Form B and the Vice-Chairman shall be responsible for seeing that the postings of collection or remission of taxes in that register do not fall into arrears. The collecting Sarkar shall not be allowed to have access to the Demand and Collection Register.

#### STOCK ACCOUNT OF RECEIPT FORMS.

82. The Vice-Chairman or Secretary shall keep the stock of receipt books in his personal custody and under lock and key and they shall only be issued under his orders.

83. All the receipts and issues shall be entered in a register in Form I. When a receipt book is made over to a collecting Sarkar, the Vice-Chairman or Secretary shall take his signature in the register.

84. When a receipt book has been used up the Sarkar shall return it to the Vice-Chairman or Secretary who before issuing a fresh book shall see (1) that no page has been extracted, and (2) that in the case of cancelled forms the original and duplicate copies are in the book and have been cancelled. For each book returned the officer receiving it shall grant a receipt to the Sarkar. The surplus forms which will be few in number, if proper care is taken in making the estimate and indents, shall be destroyed under the personal supervision of the Vice-Chairman or Secretary at the end of each year. If, however, any entire books of forms are unused, they may be used in the next year.

#### SARKAR'S LEDGER

85. The Sarkar's Ledger shall be kept in Form K and shall be posted by the Tax-Daroga or Head Clerk. One such register shall be kept for each circle of collection. The entries under the heading "collections" shall be filled up from the daily total in the Daily Collection Register under the various quarterly columns. The Remissions may either be taken from the file of remission orders (*see* rule 28) or if a Remission Register is kept (*see* rule 27) from that register. The form of the Ledger provides for entry of the total of each day's remissions according to the former method, but if the latter method is adopted, the form may be simplified by recording only the total of the Remission Register for the month concerned in one entry in the various quarterly columns, as it is unnecessary to show details of the remission orders in the Sarkar's Ledgers as well as in the Remission Register.

37. The demand shown in this statement will be the aggregate demand up to the date of the current year, and the balance of demand of previous years outstanding at the end of the last year. The collections and remissions shall be taken from the Sarkar's Ledger and the previous month's Progress Statement. The collections of the month shall be verified by the Accountant with the Abstract Register of Receipts, Form XII, and the Cashier's Cash Book, Form III, and the remissions with the Remission Register or file of remission orders. If any discrepancies are noticed, the accounts of the month shall be rechecked until the errors are detected and rectified. As soon as the correctness of the Progress Statement has been proved by the Accountant, he shall sign it and lay it before the Vice-Chairman and when it has been passed and signed by the Vice-Chairman, it shall be placed with the Sarkar's Ledgers before the next ordinary meeting of the municipal commissioners.

38. The Progress Statement represents the state of the collection accounts as a whole and Sarkar's Ledgers of each circle separately and they shall be carefully scrutinized with a view to the adoption of measures for the collection or remission of arrears.

39. The Vice-Chairman shall periodically and always at the end of the year cause a list of outstandings on account of taxes of the current and previous years to be prepared from the Demand and Collection Register. This list shall be checked with the Sarkar's Ledgers and Progress Statement. If any differences are found they must be reconciled immediately either by tracing the cause of the error or recovering from the Tax-Daroga or Sarkar any deficiencies for which they are unable to account. If the scrutiny lead to the detection of any embezzlement, the facts shall be immediately reported to the Examiner of Local Accounts in accordance with rule 8 of the Account Rules. The Vice-Chairman shall be personally responsible for seeing that the periodical verification is duly carried out.

40. The form of Remission Register, Daily Collection Register, Sarkar's Ledgers and Progress Statements classify the outstandings for each quarter separately of the current and previous years only. Except under very special circumstances taxation should never be allowed to fall into arrears extending over more than one complete year. If, however, arrears of earlier date than the previous year still remain on the books, they shall be consolidated into one account and be shewn in the column "old arrears" in the forms referred to above. At the same time a list shall be made from the Demand and Collection Register of all such demands, the letter A being placed against the blank spaces and future realizations and remissions shall then be noted in the lists and not in the original Demand and Collection Register which will have been finally cleared.

41. The form of the list may be similar to that proscribed for the Demand and Collection Register (Form B). The same care must be taken to have the payments and remissions posted in these lists, as in Demand and Collection Register (see rule 31). The consolidation of two or more quarters' outstandings into one account may also be made when more than 75 per cent. of demands has been satisfied, but the separate lists of uncollected demands must always be prepared before this is done.

42. The tax becomes due on the first day of the quarter in respect of which it is payable. If the tax is not paid within 14 days from the date on

which it becomes due a notice of demand in Form O shall be served on the person liable to pay the same. When 15 days shall have elapsed after the delivery of a notice of demand and the sum due is not paid within this period, the Sarkar shall proceed with a warrant of distress and if the demand as well as the fee prescribed by law for the warrant expenses be not then satisfied, he shall make an attachment of the defaulter's property, preparing an inventory of all goods and chattels so attached, and proclaiming a notice of sale by beat of drum. Every warrant issued for this purpose shall be recorded in a register in Form M. The Chairman or Vice-Chairman shall initial the register when signing the warrants.

43. All outstandings shall be regularly reviewed and systematic action taken. In cases where for special reasons it is considered that warrant should not be issued the Vice-Chairman's orders shall be taken and the fact noted in the register against the item.

44. Whoever receives the warrants for execution shall put his initials in the warrant register in token of having received the warrants in question. When he credits realisation or returns any warrants the Tax-Daroga or the Officer-in-Charge of the Warrant Department shall credit him with the amount of the warrants returned or the collections credited. All warrants should be returned to the office after a prescribed period.

45. When there is a surplus after the distraint of the defaulter's property such surplus shall be returned by the Sarkar to the owner of the distrained property. If the latter refuses it, the amount shall be credited to the municipal fund. Amounts realized by the seizure and sale of property shall be entered in the Register of Distraints (Form H).

#### WARRANT DEPARTMENT.

46. The procedure prescribed in the preceding rule presupposes the service of warrants by the Sarkars. If there is a separate Warrant Department the arrear demands transferred to that department shall be deducted from the balance of the Sarkar's Ledger and be treated as a separate circle or circles of collection. Each Warrant Sarkar or bailiff shall keep a collection register in Form J and the progress of his work shall be embodied in a ledger in Form K; the monthly totals of which will be embodied in the Progress Statement in Form L. The remissions and collections shall either continue to be shown in the original Demand and Collection Register or separate registers may be opened for the Warrant Department, the latter being entered in the original Demand and Collection Register against the demands transferred. The latter course need be adopted only when there is a complete division between the Collection and Warrant Departments.

#### TAXES PAID AT OFFICE

47. In the event of the taxes being paid at the municipal office the Tax-Daroga shall deal with the transactions precisely as the Collecting Sarkar does in ordinary course. For this purpose, a separate receipt book in Form H shall be kept by the Tax-Daroga, from which a receipt shall be granted for each payment made. All collections thus made shall be entered immediately in a form of collection account and on the return of the Sarkars the entries shall be transferred to the respective collection registers of the circles to which they belong.

**COLLECTION OF TAXES AT THE MUNICIPAL OFFICE.**

48. An alternative procedure is suggested the distinctive feature of which is the collection of taxes in the municipal office and not a house to house collection by the Sarkars. The commissioners shall notify under section 120 of the Act at what hours of each day the office shall be open for the receipt of money and the transaction of business. The Tax-Daroga assisted by a sufficient number of clerks shall remain in the municipal office at the counter during certain fixed hours of each day and on payment of tax by a tax-payer he shall receive the amount and hand over to him a receipt for the corresponding amount.

49. The amount so received shall be entered in a Daily Collection Register, Form J, one such register being used for each kind of tax. A separate register or set of registers shall, of course, be supplied to each receiving clerk.

50. If the tax is not paid within fourteen days from the date on which it becomes due a notice of demand in Form O shall be served upon the assessee. This demand must be served by a person authorized to accept payment of the demand. If the amount is still not paid within fifteen days, after the delivery of such notice, a distress warrant shall be issued as laid down in rule 42. Proper security shall be taken from the officer thus entrusted with the collection of demands and he shall be provided with a Collection Register, Form J.



**Demand and Register.**

**Demand and Register.**

Number on valuation or assessment list	Demand.			Subsequent revisions.						First quarter.			Second quarter.			Remarks.		
	Situation of holding.	Name of assessee.	Quarterly tax.	Reference to Mutation Register.	Increase.	Decrease.	Date of effect of Mutation.	Net quarterly assessment.	Amount.	Paid or remitted.			Date.	Receipt No.	Amount.			
										Date.	Receipt No.	Amount.						
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18 to 25	26

# FORM A.

Section 89 or 105 of the Municipal Act Assessment list of the Municipality  
of.....

Serial No.	Name of the street or road in which the hold- ing is situated.	No. of the holding in the register.	Description of the hold- ing.	Annual value of the hold- ing.	Name of Assessee	Amount of tax payable for the year.	Amount of quarterly in- stalment.	If the holding is ex- empted from assessment grounds of exemption.	Subsequent changes.			Remarks.
									Date.	Name of assessee.	Annual value of holding.	
1	2	3	4	5	6	7	8	9	10	11	12	13

NOTE.—In municipalities in which the personal tax is in force, the following heading shall be substituted :—

Column 5.—Property within the municipality and the profession or business of assessee.

**FORM C.**

**Petition of objection against assessment or valuation under section 116 of the Municipal Act.**

[illegible]

**N. B.** The petitioner is required to fill up only column Nos. 1 to 7 ; the rest are to be filled up by the officer noted here.

**FORM D.****PETITION REGISTER.**

\* *Register of petition for exemption from or reduction of assessment.*

Serial No	Name of petitioner.	Holdings to which the petition relates.			Date of receipt of petition.	Date when passed on by Vice-Chairman to revising authorities.	Date of orders passed on petition	Remarks and note of whether entry has been made in the Remission Registers.
		Circle.	Subdivision.	Number of list published under section 115, or on register of new or dimproved holdings.				
1	2	3	4	5	6	7	8	9



**FORM F.**

Register Order No. , dated

Locality and No. of holding	Name	Old arrears.	Previous year.				Current year				Remarks.
			1st quarter.	2nd quarter.	3rd quarter.	4th quarter.	1st quarter.	2nd quarter.	3rd quarter.	4th quarter.	
1	2	3	4	5	6	7	8	9	10	11	12

**FORM G.**

Register of remission orders for granted during the month of

Serial No. of order.	Date of order.	Date of receipt of notice of vacancy.	Old arrears.	Previous year.				Current year				Vice- Initials of Chairman
				1st quarter.	2nd quarter.	3rd quarter.	4th quarter.	1st quarter.	2nd quarter.	3rd quarter.	4th quarter.	
1	2	3	4*	5	6	7	8	9	10	11	12	13

\* This column should be filled in only in cases of remission under section III of the Act.

# FORM H.

## RECEIPT FORM.

Receipt Book No.....  
 Receipt No.....  
 Mahalla.....

Number of Assessee in Form B.....

Name of Assessee.....

Received the sum of Rs.....(in words) on account of municipal taxes, as per details below.

Old arrears.		Previous year.				Current year.				Total
		1st quarter.	2nd quarter.	3rd quarter.	4th quarter.	1st quarter.	2nd quarter.	3rd quarter.	4th quarter.	
Period.	Amount	Amount.	Amount.	Amount.	Amount.	Amount.	Amount.	Amount.	Amount.	Amount.
House tax ...										
Latrine tax ...										
Water tax ...										
Warrant fee ...										

Total in words.....

Date .....

*Vice-chairman.*  
*Sarker or Tahsildar.*

ACCOUNT RULES

# STOCK ACCOUNT OF RECEIPT FORMS.

Receipts including balance at the commencement of the year.				Issues.			Signature of Sarkar receiving.	Balance.		Date of return by the Sarkar.	Serial number.		Signature of receiving officer,	Remarks.	
Date	Number of forms received.	Serial number.		Date.	From.	To.		Serial No.	From.		To.	From.			To.
		From.	To.												
1		3	4	5	6	7	8	9	10	11	12	13	14	15	



# FORM J.

CIROLE NO.

## Sarkar's Daily Register of collections on account of

1	Date.																				
2	Subdivision.																				
3	Number of holding.																				
4	Owner.																				
5	Number of bill.																				
6	Old arrears.																				
7	First quarter.																				
8	Second quarter.																				
9	Third quarter.																				
10	Fourth quarter.																				
11	Total arrears.																				
12	First quarter.																				
13	Second quarter.																				
14	Third quarter.																				
15	Fourth quarter.																				
16	Total current.																				
17	Grand Total.																				
18	Warrant fees																				
19	Remarks.																				

NOTE.—Columns 11 and 16 may be omitted, if the specification of "total arrears" and "total current" is given below total of each day's collection.

**ACCOUNT BOOKS**  
**FORM K.**  
**SARKAR'S LEDGER.**  
**CIRCLE No.**

Date.	Old arrears.	Previous year.				Current year.				Total
		First quarter.	Second quarter.	Third quarter.	Fourth quarter.	First quarter.	Second quarter.	Third quarter.	Fourth quarter.	
1	2	3	4	5	6	7	8	9	10	11
Demand or balance from last month.	-									
<b>Collections—</b>										
First ...										
Second ...										
Third ...										
Fourth ...										
Etc. ...										
<b>Total Collection during the month.</b>										
<b>Remissions—</b>										
First ...										
Second ...										
Third ...										
Fourth ...										
Etc. ...										
<b>Total Remissions during the month.</b>										
<b>Total Collections and remissions.</b>										
<b>Balance ...</b>										

**Note**—By inserting a column "number of bills" between columns 1 and 2, and similar columns in the Collection and Remission Registers the actual number of bills outstanding, as well as their value, can be ascertained.

**Note**—If there is only one circle of Collection, Form K may be made to serve the purpose of the progress statement.

## PROGRESS STATEMENT.

[illegible]

# FORM M.

CIRCLE No.

WARRANT REGISTER.

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
Serial No. of Warrant.	Date of issue of Warrant.	Number of holding and Mahalla.	Name of Taxpayer.	Quarter for which tax is due.	Total amount of tax for each quarter.	Amount of penalty due.	Initials of Vice-Chairman.	Initials of Sarkar or Bailiff	Date of realization of amount.	Amount realized.	Penalty.	Orders and initials of Vice-Chairman if penalty is remitted.	Number in Distraint Register if sale is effected.	Tax Daroga's initials.	Remarks.

FORM M.

## FORM N.

## REGISTER OF DISTRAINTS OF PROPERTY AND SALES.

1. Name of defaulter.
  2. Number on register and specification of the holding on account of which the arrear is due.
  3. Amount of arrear due.
  4. Amount of costs and penalty.
  5. Total amount to be realized.
  7. Inventory of property seized under distress.
  7. Date of distress.
  8. Date of sale.
  9. Detail of articles sold.
  10. Amount realized on each article.
  11. Purchaser's name.
  12. Total amount realized.
  13. Amount paid into the commissioners' office on account of the arrear due, with date.
  14. Amount paid into the commissioners' office on account of costs and penalties.
  15. Surplus proceeds of sale remaining after deducting the amount of arrears, costs and penalties due.
  16. How the surplus was disposed of, with date of such disposal.
  17. Balance of arrear still remaining unrealized, if any.
  18. On what date such remaining balance was realized or written off by authority.
  19. Remarks (explaining why the property seized was released without sale if not eventually sold, etc., etc.).
-

**ACCOUNT RULES**

**FORM O.**

**Notice of Demand under section 12B, Bihar and Orissa Municipal Act VII of 1922.**

To

Please take notice that the sum of Rs \_\_\_\_\_ being the amount due from you on account of municipal taxes of holding No. \_\_\_\_\_ Ward No. \_\_\_\_\_ as in the statement below, is hereby demanded from you, and if you do not, within fifteen days of the service of this notice on you, pay the same to an officer authorized to receive payment, or in the office of the municipal commissioners, the same with costs will be levied by distress and sale of your movable property or otherwise as provided in the law.

MUNICIPAL OFFICE.

Chairman,

The

Municipality.

Holding tax.	Latrine tax.	Water tax.	Total.
1	2	3	4
Arrears ... ..			
Current quarter ... ..			
Total ... ..			

By Order of the Government of Bihar and Orissa  
(Ministry of Local Self-Government),  
M. G. HALLET,  
Secretary to Government.

*These rules had been adopted by all the municipalities in this Province, after the passing of the present municipal Act the business of the municipalities will be conducted according to these rules, until the Commissioners at a meeting frame new rules of business under sec. 52 of the Act, or adapt the model rules under sec. 52 framed by the Local Government.]*

## MODEL RULES FOR MUNICIPALITIES.

Under Section 851A, Act III (B. C.) of 1894.

Issued with Circular No. 5T.—M., dated the 8th September. 1894, to all Commissioners of Divisions, for circulation to the municipalities of their divisions. It says—"These rules will be found useful as a guide. The Commissioners will not be bound to adopt any of them which they may seem unsuited to their Municipality; but whenever the rules adopted differ materially from these on any point, the reasons for the variation should be explained when they are submitted for the sanction of the Local Government under section 851A (2) of the Act."

(a) *The time and place of their meetings, the business to be transacted at meetings, and the manner in which notice of meetings shall be given.*

Rule 1.—An ordinary meeting of the Commissioners shall be held on the                      day of every month: Provided that if the                      day of any month falls on a gazetted holiday, or if for any other reason it is deemed inconvenient, the Chairman may fix another day for the ordinary meeting.

E G "first Monday"  
"last Saturday."

Rule 2.—Meetings shall be held at the office of the Commissioners, or at such place as the Chairman may from time to time determine.

Rule 3.—Notices of motions, accompanied by verbatim drafts, must be sent to the Chairman, or, in the case of there being a Secretary, to the Secretary, in time to be included in the list of business for the next meeting. Notices received too late shall be inserted in the list of business of the next succeeding meeting.

Rule 4.—A notice book shall be kept by the                      of the Commissioners, in which all notices of motions shall be entered. All such notices shall be dated and numbered as received.

Rule 5.—At least one week's notice of all meetings shall be given to every Commissioner.

Rule 6.—The notices shall set forth clearly and fully the business to be transacted at the meeting, and no business other than that so stated shall be transacted, except with the consent of all the Commissioners present.

Rule 7.—The notice shall be sent by post or by such other method as may be convenient: Provided that if a local newspaper be published in the Municipality, the Commissioners, by a resolution duly passed, may decide, that the publication of a general notice in the newspaper in question shall be sufficient.

(b) *The conduct of proceedings at meetings, the due record of all decisions and discussions, and the adjournment of meetings.*

## ORDERS OF BUSINESS.

**Rule 8.**—At ordinary meetings, the business shall be conducted in the following order:—

- (a) The minutes of the last ordinary meeting, and of any special meeting held since, shall be read, and if approved as correctly entered, shall be signed by the Chairman of such meeting.
- (b) Business postponed from the last ordinary meeting shall be considered.
- (c) A progress report of works shall be laid before the Commissioners.
- (d) Letters and reports of Committees shall be read, and accounts and statements shall be considered and passed.
- (e) Motions of which due notice has been given to be discussed.

**Rule 9.**—At a special meeting, only the business for which the meeting was called shall be considered. Provided that, with the consent of all the Commissioners present, any other business may be considered.

**Rule 10.**—In the event of any objection being raised to the manner in which any resolution has been recorded, the Chairman shall decide the question after reference to the original draft of the resolution, and if he finds the minute to be inaccurate, shall make the necessary correction in the minute book.

**Rule 11.**—Unless by permission of the majority of the meeting, all subjects shall be discussed in the order in which they appear in the notice paper.

## QUESTIONS.

**Rule 11A.**—Any Commissioner who has given to the Secretary two clear days before the day of meeting, may before other business commences ask a question or questions of the President relating to the affairs of the municipality. The questioner may briefly explain his question when putting it and it shall be at the discretion of the President to explain his answer, but no debate shall be allowed on any answer. The President shall, when he thinks advisable, have the answer to such question printed and laid before the meeting.

(This rule, which is a reproduction of rule 12 of the Rules of Business of the Commissioners of Calcutta Corporation adopted on 22nd May, 1889, has been added as a model rule as to interpellations by Bengal Municipal Letter No. 1500 T. M. of 29th June, 1904, addressed to the Commissioner of the Burdwan Division.

No rule can be made under section 351 compelling a Chairman to answer any question.)

## OF MOTIONS AND AMENDMENTS.

**Rule 12.**—Every motion and amendment duly moved must be seconded, and until seconded, no debate thereon can take place.

**Rule 13.**—Every motion or amendment duly made and seconded and pressed to a division, shall be reduced to writing and signed by the proposer and seconder before being put to the vote. Every such resolution or amendment shall be recorded in full in the proceedings, together with the number and names of voters for and against it.



**Rule 14.**—Every amendment shall be so worded as to be capable of making an intelligible sentence either alone or in its proper place in an original motion, as the case may be; provided that no amendment can merely negative the original motion.

**Rule 15.**—The President of the meeting may for reasons to be recorded in writing and entered in the minutes of the proceedings.

(a) rule that a motion or amendment is illegal or out of order, and,

(b) make such alterations in a motion or amendment as shall in his opinion render it legal and in order;

and may in case (a) refuse to put the motion or amendment to the meeting, and in case (b) refuse to put the motion or amendment to the meeting unless and until the proposer and seconder accept and sign the alterations made.

And the decision of the President shall be final.

**Rule 16.**—After a motion has been moved and seconded an amendment may be moved at any stage of the debate thereon.

**Rule 17.**—On the discussion being concluded, in the event of several amendments having been proposed, the President shall put the last amendment to the vote first; if it is negatived, he shall put the last preceding amendment; and lastly, the first amendment; and if all the amendments are lost, the original proposition shall be put to the vote.

**Rule 18.**—When a motion or an amendment has been put from the chair, and been declared by the President to be duly carried, no further proposals for amending the motion or amendment can be entertained.

#### OF THE RIGHT TO SPEAK.

**Rule 19.**—The President may require members to stand when they address the meeting.

**Rule 20.**—The member who first rises to address the meeting shall be entitled to be heard first, and should more than one member rise to address the meeting at the same time, the order of precedence shall be determined by the President.

**Rule 21.**—Any member shall be at liberty to call the attention of the President to a point of order, even when a member is speaking. On a point of order being raised, the member addressing the meeting shall resume his seat until the question has been decided by the President. After the decision of the President, the same point of order cannot be raised again. Except as provided by this rule, no member shall interrupt a speaker in possession of the meeting.

**Rule 22.**—Except as provided in the last preceding rule, no member shall speak except to move or second a motion or amendment, or to support or oppose a motion or amendment which has been duly moved and seconded.

**Rule 23.**—A speaker who has exhausted his right to speak on an original motion may speak on any amendment being moved, as that raises a new question.

**Rule 24.**—The mover of a motion or amendment shall in all cases have a right of reply, but otherwise no member shall speak more than once on the

some motion or amendment, unless in explanation of some part of his original speech.

#### OF PROTESTS OR DISSENTS.

Rule 25.—Protests must be limited to a concise and definite statement of the motive which prompted the votes of members who voted in the minority on a given question.

Rule 26.—Protests must be handed to the Chairman before the conclusion of the meeting at which the resolution protested against was passed.

Rule 27.—Protests duly made shall be appended to and published with the minutes.

#### OF ADJOURNMENTS.

Rule 28.—It shall be competent to any member to move the adjournment of the debate or of the meeting in a speech not exceeding five minutes in duration.

Rule 29.—When a motion for the adjournment of the meeting or of a debate is made, it shall be seconded without a speech, and put by the Chairman to the vote without debate or amendment.

Rule 30.—No motion for adjournment of the meeting or of a debate shall be admissible which proposes an adjournment beyond the next ordinary meeting.

#### ADJOURNED MEETINGS.

Rule 31.—An adjourned meeting is not competent to transact any business save that which the original meeting left unfinished.

Rule 32.—An adjourned meeting being merely a continuation of the original meeting, does not require any fresh notice.

#### MISCELLANEOUS.

Rule 33.—Unless not less than two-thirds of the Commissioners consent by signing a requisition, no subject once finally disposed of can be reconsidered within six months.

Rule 34.—When any business, of which notice has not been given, is considered at a meeting, the decision recorded or resolution adopted at such meeting shall be of no effect unless and until it is confirmed at the next succeeding ordinary meeting, or at a special meeting called expressly for the purpose.

Rule 35.—For the purpose of taking into consideration business involving many details, the meeting may resolve itself into a committee of the whole body. When this has been determined on, the rule prohibiting any person from speaking more than once on the same question shall be deemed suspended until the meeting resumes.

Rule 36.—When a motion or amendment is put to the vote, the President or Secretary shall record against it, first the names of members voting for it, and then the names of those voting against it.

Rule 37.—Voting by proxy is prohibited; and no member may vote upon any motion or amendment unless he be present in person at the time when it is put to the vote.

**Rule 38.**—The minutes shall contain a brief abstract of the discussion preceding each resolution.

**Rule 39.**—A copy of the minutes of the proceedings of any meeting of the Commissioners shall be supplied to every Commissioner who may apply for it. An abstract of the minutes shall be affixed in some conspicuous spot accessible to the public at the place of meeting of the Commissioners.

#### ELECTION OF CHAIRMAN AND VICE-CHAIRMAN.

**Rule 40.**—At a meeting called to elect a Chairman, the Commissioners shall first proceed to elect a President of the meeting. Such President shall not be a candidate for the office of Chairman.

**Rule 41.**—If the number of votes for two Commissioners proposed as President of the meeting is equal, the selection of one of them shall be decided by lot.

**Rule 42.**—The Chairman and Vice-Chairman shall be elected, after such discussion as may be necessary, by each Commissioner handing to the President a signed voting-paper containing the name of the person for whom he votes, the President also voting similarly.

**Rule 43.**—The President, as soon as all the voting-papers have been delivered to him, shall openly produce and read them, and count the votes.

**Rule 44.**—The candidate for whom there is the largest number of votes shall be declared by the President to be, and thereupon shall be, elected. In case of equality of votes the President shall give the casting vote.

#### *(c) The custody of the common seal.*

**Rule 45.**—The common seal shall remain in the custody of the Chairman. Provided that if a Secretary has been appointed, the Chairman may by a written order delegate the custody of the seal to the Secretary.

#### *(d) The division of duties among the Commissioners, and the powers to be exercised by Sub-Committees or members to whom particular duties are assigned.*

#### DIVISION OF DUTIES AMONG THE COMMISSIONERS.

**Rule 46.**—The Commissioners may, from time to time, appoint out of their number such and so many Committees, either of a general or special nature, and consisting of such number of persons as they think fit, for any purposes which in their opinion can be conveniently regulated and managed by means of such Committees; but the acts of every such Committee shall be submitted to the Commissioners for their approval.

**Rule 47.**—The members of the General Committees shall hold office for one year only, but shall be eligible for re-appointment.

**Rule 48.**—Save in the case of illness, a member of a General Committee who, without the previous permission of the Commissioners, shall fail to attend six consecutive meetings of such Committee, shall thereby cease to be a member, and the Committee shall apply to the Commissioners to appoint another member in his place.

**Rule 49.**—The Commissioners may, from time to time, delegate to one or more of its members the duty of inspecting any work which is being carried out under their orders or any institution under their control and management.

## PROCEEDINGS OF COMMITTEES.

Rule 50.—A Committee may meet and adjourn as it thinks proper.

Rule 51.—The quorum of a Committee shall be three members.

Rule 52.—A Committee may elect a Chairman of its meetings.

Rule 53.—If no Chairman is elected, or if the Chairman elected is not present at the time for holding any meeting, the members present shall choose one of their number to be Chairman.

Rule 54.—Every question at a meeting shall be determined by a majority of the votes of the members present and voting on that question.

Rule 55.—In case of an equal division of votes, the Chairman shall have a second or casting vote.

(e) *The persons by whom receipts shall be granted for money received under this Act.*

This matter is provided for in the Account Rules *infra*.

(f) *The duties, appointment, leave, suspension, and removal of the officers and servants of the Board.*

Rule 56.—The Chairman may suspend any officer or servants of the Commissioners for misconduct or incompetence. Provided that, in every case in which the officer's salary exceeds twenty rupees per mensem, the matter shall be laid before the Commissioners at their next ordinary meeting.

Rule 57.—Casual leave for a period not exceeding seven days at any one time, or 15 days in 12 months, and leave on medical certificate for any period not exceeding a month, may be granted by the Chairman with or without pay, and with or without the appointment of a substitute, to any officer or servant of the Commissioners.

Rule 58.—All other leave must be granted by the Commissioners at a meeting, provided that the leave and leave allowances granted to an employee of the municipality shall in no case exceed that or those to which he would be entitled if he were a Government servant.

(Note.—The appointment and removal of officers and servants are provided for in the Act, and rules may be dispensed with. As to the duties of municipal servants, they vary so much in different municipalities that it is not desirable to deal with them in a set of model rules. Each municipality can make its own rules if they are needed.)

Issued with Circular No. 10 M., dated Calcutta, the 5th February, 1895. to all Commissioners of Divisions. It says—"The Commissioners of a municipality granted to an employee in their service leave allowances which were much in excess of the amount admissible to an officer of Government of the same standing under the rules contained in the Civil Service Regulation. Action of this kind is opposed to the policy of the Government of India." The Government invited the Commissioners of all municipalities to consider these rules and to signify their adoption of them for its sanction.

**MODEL RULES OF BUSINESS REGULATING THE PROCEDURE  
FOR THE ELECTION OF A CHAIRMAN, VICE-CHAIRMAN AND  
PRESIDENT OF A MUNICIPALITY, CIRCULATED WITH B. & O.  
GOVERNMENT, LETTER NO. 7887—94 L. S. G., DATED 1-8-28.**

1. At the meeting held under section 32 of the Bihar and Orissa Municipal Act, 1922, for the purpose of electing a Chairman, Vice-Chairman and President (if any), the Commissioners shall first proceed to elect a president of the meeting who shall not himself be a candidate for any of the said offices.

2. The president of the meeting shall then call for nominations of candidates for the office of Chairman. Every member desiring to propose a candidate for election, shall hand to the president of the meeting a nomination paper containing the name of the candidate and the signature of not less than two Commissioners who support the candidature. If any nomination paper does not bear the signature of two Commissioners, the president of the meeting shall declare it to be invalid.

3. If only one valid nomination is received, the president of the meeting shall declare the candidate so nominated to be duly elected.

4. If more than one valid nomination is received, the president of the meeting shall call on the commissioners to vote by ballot according to the following procedure :—

- (a) Each commissioner shall be given a voting paper containing the names of all duly nominated candidates; he shall place a cross against the name of the candidate for whom he wishes to record his vote, but shall not sign nor make any other mark on the paper and shall place the paper in a ballot box provided for this purpose.
- (b) The president of the meeting shall then count the votes recorded. If there are only two candidates, he shall declare the one who has majority of votes to be duly elected. If both candidates obtain an equal number of votes the president shall give a second or casting vote and shall declare the candidate for whom he votes to be duly elected.
- (c) If there are more than two candidates duly nominated the following system of elimination shall be followed :—
  - (i) After the votes have been recorded and counted the president of the meeting shall announce the total number of votes recorded for each candidate. If one candidate receives more than half the total number of votes recorded he shall be declared to be duly elected.
  - (ii) If no candidate obtains more than half the total number of votes, the candidate with the least number of votes shall be eliminated and a fresh vote taken. This process shall be continued until a candidate obtains more than half the total number of votes recorded whereupon he shall be declared to be duly elected.

- (iii) If the number of votes recorded for all the candidates or for each of the candidates who obtain the least number of votes is equal, one of these candidates shall be eliminated by drawing lots in such manner as the president of the meeting may determine.

#### EXAMPLES.

- (i) Of 18 votes recorded, A receives 10 and B 8. A is duly elected.
- (ii) Of 18 votes recorded, A receive 9 and B 9 votes. The President gives his casting vote to A who is duly elected.
- (iii) Of 18 votes recorded, A receives 6 votes, B 6 votes and C 6 votes; lots shall be drawn up for the elimination of one candidate and a further vote taken.
- (iv) Of 18 votes recorded, A receives 8, B 6 and C 4. C shall be eliminated and the Commissioners shall proceed to record their votes for A and B.
- (v) Of 18 votes recorded, A receives 8, B 5 and C 5 votes; lots shall be taken for the elimination of B or C, and a further vote taken.

5. The same procedure shall then be followed in the election of the Vice-Chairman and the President, if any.

6. If the president of the meeting is a salaried servant of Government who is not qualified by section 20 (1) to vote at an election of a Chairman, he shall not give a casting vote as prescribed in Rule 4 (b), but the question which candidate has been duly elected shall be determined by lot in such manner as the President of the meeting may determine.

7. The same procedure shall also be followed for the purpose of an election held under section 30 to fill a vacancy in the office of Chairman, Vice-Chairman or President provided that in the case of the election of a Vice-Chairman, and in a municipality in which section 20 is in force, in the case also of the election of a Chairman, the Chairman or President, as the case may be, may preside at the meeting.

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[These are not the rules contemplated by sec. 52; under the section the Commissioners at a meeting have to frame rules and after they are approved by the Local Government, the Commissioners are bound to follow them as law. These are a set of model rules showing the lines on which the Commissioners are to frame their rules, they are not bound to follow them; but they may in a meeting adopt these rules as their rules of business. Until that is done the old rules under sec. 851 A of the B. M. Act adopted by almost all the municipalities in Bihar and Orissa will be in force and the business of meetings will be conducted according to them.]

## MODEL RULES OF BUSINESS FOR MUNICIPALITIES UNDER SECTION 52 OF THE BIHAR AND ORISSA MUNICIPAL ACT, 1922.

### PRELIMINARY.

1. In these rules " section " means a section of the Bihar and Orissa Municipal Act, 1922 (Bihar and Orissa Act VII of 1922).

*The manner of election of the Chairman, Vice-Chairman and President.*

2. At the meeting held under section 32 for the purpose of electing a chairman, vice-chairman and president (if any), the commissioners shall first proceed to elect one of their number who is not himself a candidate for any of the said offices to preside.

3. The president of the meeting shall then call for nominations of candidates for the office of chairman. A commissioner desiring to propose a candidate for election shall hand to the president of the meeting a nomination paper signed by himself as proposer and by at least one other commissioner as seconder, and containing the name of the candidate proposed for election. If any nomination paper does not bear the signature of two commissioners, the president of the meeting shall declare it to be invalid.

4. If only one valid nomination paper is received, the president of the meeting shall declare the candidate so nominated to be duly elected.

5. If more than one candidate is duly nominated the president of the meeting shall call on the commissioners to vote by ballot according to the following procedure:—

(a) (i) The president of the meeting shall distribute or cause to be distributed to each commissioner (qualified to vote and) present at the meeting a ballot paper containing the names of all duly nominated candidates.

(ii) A commissioner desiring to vote shall then proceed to record his vote by placing a cross against the name of the candidate for whom he wishes to vote but shall not sign nor make any mark on the paper and shall place the paper in the ballot box provided for the purpose.

(b) The president of the meeting shall then count the votes recorded. If there are only two candidates, he shall declare the one who has majority of votes to be duly elected. If both candidates obtain an equal number of votes the president shall give a second or casting vote and shall declare the candidates for whom he votes to be duly elected.

(c) If there are more than two candidates duly nominated the following system of elimination shall be followed :—

- (i) After the votes have been recorded and counted the president of the meeting shall announce the total number of votes recorded for each candidate. If one candidate receives more than half the total number of votes recorded he shall be declared to be duly elected.
- (ii) If no candidate obtains more than half the total number of votes the candidate with the least number of votes shall be eliminated and a fresh vote taken. This process shall be continued until a candidate obtains more than half the total number of votes recorded whereupon he shall be declared to be duly elected.
- (iii) If the number of votes recorded for each of the candidates or for each of the candidates who obtain the least number of votes is equal, one of these candidates shall be eliminated by drawing lots in such manner as the president of the meeting may determine.

#### EXAMPLES.

- (i) Of 18 votes recorded, A receives 10 votes and B 8. A is duly elected.
- (ii) Of 18 votes recorded, A receives 9 votes and B 9 votes. The president gives his casting vote to A who is duly elected.
- (iii) Of 18 votes recorded, A receives 6 votes, B 6 votes and C 6 votes, lots shall be drawn for the elimination of one candidate and a further vote taken.
- (iv) Of 18 votes recorded, A receives 8, B 6 and C 4, C shall be eliminated and the commissioners will proceed to record their votes for A and B.
- (v) Of 18 votes recorded, A receives 8, B 5 and C 5 votes. lots shall be drawn for the elimination of B or C, and a further vote taken.

6. The same procedure shall then be followed in the election of the vice-chairman and the president, if any.

7. In the case of the election of a chairman, if the president of the meeting is a salaried servant of Government he shall not give a casting vote as prescribed in rule 5 (b) but the question which candidate has been duly elected shall be determined by lot in such manner as the president of the meeting may determine.

For adoption by a municipality where section 28 is in force.

8. In the case of an election of president, chairman or vice-chairman to fill a casual vacancy under section 80, the procedure prescribed in rules 2 to 7 shall apply subject to the following modifications :—

- (a) At the meeting held for the election of the president, any commissioner other than the chairman and vice-chairman, who is not himself a candidate for the post shall be elected to preside.



(b) At the meeting held for the election of the chairman, the president shall preside or in his absence any commissioner other than the vice-chairman, who is not himself a candidate for the post, shall be elected to preside.

(c) At the meeting held for the election of the vice-chairman, the president shall preside or in his absence any commissioner other than the chairman, who is not himself a candidate for the post, shall be elected to preside.

For adoption by a municipality where section 28 is not in force.

8A. In the case of an election of chairman or vice-chairman to fill a casual vacancy under section 80, the procedure prescribed in rules 2 to 7 shall apply, subject subject to the following modifications:—

(a) At the meeting held for the election of the chairman, the vice-chairman shall preside or in his absence any commissioner, who is not himself a candidate for the post, shall be elected to preside.

(b) At the meeting held for the election of the vice-chairman, the chairman shall preside or in his absence any commissioner who is not himself a candidate for the post, shall be elected to preside.

*The time and place of meetings, the business to be transacted at meetings and the manner in which notice of meetings shall be given.*

e.g. "first Monday" & "last Saturday."

9. An ordinary meeting of the commissioners shall be held on the \_\_\_\_\_ day of every month. Provided that if the \_\_\_\_\_ day of any month falls on a gazetted holiday, or if the chairman for any other reason considers such day inconvenient, he may fix another day, for the ordinary meeting.

10. Meetings shall be held at the office of the commissioners or at such place as the chairman may from time to time determine.

11. A commissioner who desires to move a motion shall give notice in writing to the President Chairman not later than the eighth day before the day fixed for the next meeting and shall together with the notice send a copy of the motion which he desires to move.

12. The President Chairman shall decide if the motion is legal or in order, and if so, direct—

(i) every such motion received in time for the next meeting to be included in the list of business for the next meeting;

(ii) every such motion received out of time to be included in the list of business for the next succeeding meeting.

13. If the President Chairman decides that a motion is illegal or not in order, he shall cause the commissioner who has sent the notice of such motion to be informed accordingly and may suggest to him such alterations as shall in his opinion render the motion to be legal or in order. The decision of the President shall be final.

14. A notice book shall be kept by the Secretary Head-Clerk, etc. of the commissioners in which all notices of motion shall be entered. All such notices shall be dated and numbered as received.

15. The chairman shall send to every commissioner at least, seven days' notice of all meetings except an adjourned meeting. Provided in case of any sudden emergency, the chairman or in his absence the vice-chairman shall be competent to call a meeting at shorter notice.

16. The notices shall set forth clearly and fully the business to be transacted at the meeting.

17. The notice shall be sent by post or by such other method as may be convenient. Provided that if a local newspaper be published in the municipality the commissioners by a resolution duly passed at a meeting may decide that the publication of a general notice in the newspaper in question shall be sufficient.

18. No business other than that included in the notice for any meeting issued under rule 15 shall be transacted at such meeting except with the consent of all the commissioners present at such meeting.

*The conduct of proceedings at meetings, the due record of all dissents and discussions, and the adjournment of meetings.*

#### ORDERS OF BUSINESS.

19. At ordinary meetings, the business shall be conducted in the following order:—

- (a) Questions shall be asked and replies given thereto as provided under rule 22.
- (b) The minutes of the last ordinary meeting, and of any special meeting held since, shall be read, and if approved as correctly entered, shall be signed by the president of such meeting.
- (c) Business postponed from the last ordinary meeting shall be considered.
- (d) A progress report of works shall be laid before the commissioners.
- (e) Letters and reports of committees shall be read and accounts and statements shall be considered and passed.
- (f) Motions included in the list of business for the meeting shall be discussed.

20. At a special meeting, only the business for which the meeting was called shall be considered. Provided that, with the consent of all the commissioners present, any other business may be considered.

21. In the event of any objection being raised to the manner in which any resolution has been recorded the president of the meeting shall decide the question after reference to the original draft of the resolution, and if he finds the minute to be inaccurate, shall make the necessary correction in the minute book.

#### QUESTION.

22. (a) Any commissioner who has given forty-eight hours' clear notice to the <sup>President</sup>~~Chairman~~ before the time of meeting, may, before other business commences, ask a question or questions of the chairman relating to the affairs of the municipality. No debate shall be allowed on any question. When he thinks it advisable to do so, the chairman shall have the answer to such question printed or typed and laid before the meeting.

(b) Questions shall not be argumentative or hypothetical, or defamatory of any person or any section of the community.

(c) The Chairman  
President may disallow any question which does not conform to sub-rule (b).

(d) The question, unless it has been disallowed by the Chairman  
President and the answer, if any, given to it, shall be entered in the minutes of the proceedings of the meeting.

#### OF MOTIONS AND AMENDMENTS.

23. After a motion has been moved and seconded an amendment may be moved at any stage of the debate thereon.

24. Every amendment shall be so worded as to be capable of making an intelligible sentence either alone or in its proper place in an original motion, as the case may be.

25. An amendment shall not be moved which has merely the effect of a negative vote.

26. A motion or amendment duly moved and seconded shall not be withdrawn without the consent of all the commissioners present at the meeting.

27. The president of the meeting may for reasons to be recorded in writing and entered in the minutes of the proceedings—

(a) rule that an amendment is illegal or out of order, and

(b) make such alterations in an amendment as shall, in his opinion, render it legal or in order; and may in case (a) refuse to put the amendment to the meeting, and in case (b) refuse to put the amendment to the meeting unless and until the proposer and seconder accept and sign the alterations made.

28. The decision of the president of the meeting shall be final.

29. When a motion or an amendment has been put from the chair, and been declared by the president of the meeting to be duly carried, no further proposals for amending the motion or amendment can be entertained.

30. On the discussion being concluded, in the event of several amendments having been proposed, the president of the meeting shall put the amendments to the vote in any order which he considers most convenient.

31. Votes shall be given by show of hands.

32. Every motion or amendment duly moved and seconded and pressed to a division, shall be recorded in full in the proceedings, together with the number and names of voters for and against it.

33. Every motion or amendment duly moved shall be seconded, and if not seconded immediately after being moved, no debate shall taken place thereon nor shall it be put to the meeting and no entry thereof shall be made in the minutes.

#### OF THE RIGHT TO SPEAK.

34. The president of the meeting may require members to stand when they address the meeting.

## GENERAL RULES OF BUSINESS.

33. The member who first rises to address the meeting shall be entitled to be heard first, and should more than one member rise to address the meeting at the same time the president of the meeting shall decide the order in which such members shall speak.

36. Any member shall be at liberty to call the attention of the president of the meeting to a point of order, even when a member is speaking. On a point of order being raised, the member addressing the meeting shall resume his seat until the question has been decided by the president. No discussion shall be allowed on a point of order. After the decision of the president, the same point of order cannot be raised again. Except as provided by this rule, no member shall interrupt a speaker in possession of the meeting.

37. Except as provided in rules 35 and 38 no member shall speak more than once upon any motion or amendment except with the permission of the president of the meeting for the purpose of making a personal explanation but in that case he shall not be entitled to bring forward any debatable matter.

38. A member who has spoken upon a motion may speak again upon any amendment thereof afterwards moved.

39. The mover of a motion or amendment shall in all cases have a right of reply.

## OF PROTEST OR DISSENTS.

40. Protests must be limited to a concise and definite statement of the motive which prompted the votes of members who voted in the minority on a given question.

41. Protests must be handed to the president of the meeting before the conclusion of the meeting at which the resolution protested against was passed.

42. Protests duly made shall be appended to and published with the minutes.

## OF ADJOURNMENTS.

43. It shall be competent to any member to move the adjournment of the debate or of the meeting in a speech not exceeding five minutes in duration.

44. When a motion for the adjournment of the meeting or of a debate is made, it shall be seconded without a speech, and put by the president of the meeting to the vote without debate or amendment.

45. No motion for the adjournment of the meeting or of a debate shall be admissible which proposes an adjournment beyond the next ordinary meeting.

## ADJOURNED MEETING.

46. No business shall be transacted at an adjourned meeting except the business contemplated at the original meeting.

47. An adjourned meeting, other than an adjourned meeting under section 47 (8) being merely a continuation of the original meeting, does not require any fresh notice.

# QUORUM.

48. If at any time during a meeting the number of commissioners present falls short of that required to form a quorum, the meeting shall stand adjourned to some future date to be appointed by the president of the meeting, and the business that remains undisposed of shall be postponed to the adjourned meeting.

## MISCELLANEOUS.

[For adoption by a municipality where section 28 is in force]

been elected to preside in his absence shall retire in his favour.

For adoption by a municipality where section 28 is not in force.

may be, shall retire in his favour.

(b) When the meeting commences without the chairman and the vice-chairman and the latter be present at any time during such meeting, he shall preside over it from the stage of his arrival and the commissioner, who has been elected to preside over it in his absence shall retire in his favour.

50. Unless two-thirds of the number of commissioners consent by signing a requisition in this behalf, a motion shall not raise a question substantially identical with one on which the commissioners have given a decision within the preceding six months.

51. When any business, of which notice has not been given, is considered at a meeting, the decision recorded or resolution adopted at such meeting shall be of no effect unless and until it is confirmed at the next succeeding ordinary meeting, or at a special meeting called expressly for the purpose.

52. For the purpose of taking into consideration business involving many details, the meeting may, on the motion of any member present at the meeting, resolve itself into a committee of the whole body. When such motion has been carried, the rule prohibiting any person from speaking more than once on the same question shall not apply to the discussion of the aforesaid business in committee.

58. When a motion or amendment is put to the vote, the president of the meeting or secretary shall record against it first the names of members voting for it, and then the names of those voting against it

54. Voting by proxy is prohibited and no member may vote upon any motion or amendment unless he be present in person at the time when it is put to the vote.

55. The minutes shall contain a brief abstract of the discussion on each resolution.

56. The minutes shall be recorded in English, but a translation of each resolution in <sup>Urdu</sup> Urdu may be appended below it for the facility of reference by persons ignorant of English.

57. A copy of the minutes of the proceedings of any meeting of the commissioners shall be supplied to every commissioner who may apply for it. An abstract of the minutes shall be affixed in some conspicuous spot accessible to the public at the place of meeting of the commissioners.

#### THE CUSTODY OF THE COMMON SEAL.

58. The common seal shall remain in the custody of the chairman. Provided that if a secretary has been appointed, the chairman may, by a written order, delegate the custody of the seal to the secretary.

*The division of duties among the commissioners, and the powers to be exercised by sub-committees or members to whom particular duties are assigned.*

59. The members of the committees appointed under section 49 shall hold office for one year only, but shall be eligible for reappointment.

60. Save in the case of illness, a member of a committee who, without the previous permission of the commissioners, shall fail to attend four consecutive meetings of such committee, shall thereby cease to be a member, and the committee shall apply to the commissioners to appoint another member in his place.

#### PROCEEDINGS OF COMMITTEES.

61. A committee may meet and adjourn as it thinks proper.

62. The quorum of a committee shall be three members.

63. A committee may elect a president to preside at its meetings.

64. If no president is elected or if the president elected be not present at the time for holding any meeting, the members present shall choose one of their members to be president.

65. Every question at a meeting shall be determined by a majority of the votes of the members present and voting on that question.

66. In case of the equal division of votes, the president shall have a second or casting vote.

Copy of letter No. 7759—68 L.S.G., dated Patna, the 6th November, 1924, from H. E. Horsefield, Esqr., I.C.S., Secretary to Government of Bihar and Orissa, (Ministry of Local Self-Government) to the Commissioner of the Orissa Division.

Subject:—Model rules of business under section 52 of the Bihar and Orissa Municipal Act, 1922.

I am directed to say that Government in the Ministry of Local Self-Government have decided that model rules of business regulating the duties and powers of the President of a Municipality in addition to those circulated with Government orders No. 7322-79-L. S. G., dated the 1st October, 1924, and No. 1072-1130-L. S. G. R., dated the 2nd July, 1925 (copies of which were forwarded to you with Memo No. 7380-84-L. S. G., dated the 1st October, 1924 and No. 1131-1151-L. S. G. R., dated the 2nd July, 1925, respectively) are required and have therefore framed the rules of which a copy is enclosed.

2. Government have also decided to make the following amendment in rule 13 of the model rules of business circulated with Government order No. 7322-79-L. S. G. dated the 1st October, 1924 referred to above:—

At the end of rule 13 add the sentence.

'The decision of the <sup>President</sup>  
Chairman shall be final.'

I am to request that the Municipalities in your division may be asked to consider the desirability of adopting these model rules and the amendment with the approval of Government.

#### GENERAL RULES OF BUSINESS.

1. The President's sole duty shall be to preside at the meetings of the Municipality and he shall exercise the same powers at both the ordinary and the special meetings.

2. The President shall decide all points of order which may arise at a meeting and his decision shall be final.

3. (a) The President shall preserve order at meetings and have all the powers necessary for the purpose of enforcing his decision on all points of order.

(b) The President may in the case of rave disorder arising in the meeting suspend its sitting for a time to be named by him.

4. The President shall not suspend the proceedings of a meeting after a quorum has been formed.

5. The President shall not propose or second any motion brought forward in a meeting nor shall he express his views on any motion before putting it to votes.

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**GOVERNMENT OF BIHAR AND ORISSA,  
(MINISTRY OF LOCAL SELF-GOVERNMENT).**

**From**

**M. G. HALLET, Esq., I.C.S.,  
SECRETARY TO GOVERNMENT.**

**To**

**ALL COMMISSIONERS OF DIVISIONS.**

**Ranchi, the 28rd May, 1923.**

**Subject.—Model rule regarding the adjournment of a meeting of municipal commissioners for want of a quorum.**

**Sir,**

It has recently been brought to the notice of Government in the Ministry of Local Self-Government that at a meeting of the commissioners of a certain municipality when the business on the agenda commenced five members were present, and this number was sufficient to form the quorum prescribed by section 47 (2) of the Bihar and Orissa Municipal Act; subsequently one of the commissioners left the meeting, thus reducing the number below that required for a quorum, but the business for which the meeting had been convened was discussed by the remaining members and a resolution was passed. The question has been raised whether such a resolution passed after the number of members present is no longer sufficient to form a quorum is valid, and Government consider it desirable to place the matter beyond doubt by means of a rule framed under section 52 of the Act in amplification of section 47. I am, accordingly, directed to enclose a copy of a model rule under section 52 of the Bihar and Orissa Municipal Act, 1922, and to suggest that the municipalities in your division may be requested to adopt this rule and to obtain the approval of Government as required by section 52 and section 354 of the Act.

2. A copy of this letter has been forwarded to all municipalities and District Magistrates direct.

I have the honour to be,

SIR,

Your most obedient Servant,

**M. G. HALLET,**

*Secretary to Government.*

**MODEL RULE REGARDING THE ADJOURNMENT OF A MEETING  
OF COMMISSIONERS FOR WANT OF A QUORUM, FRAMED UNDER  
SECTION 52 (a) OF THE BIHAR AND ORISSA MUNICIPAL ACT, 1922.**

" If at any time during a meeting the number of commissioners present falls short of that required to form a quorum, the meeting shall stand adjourned to some future date to be appointed by the president of the meeting, and the business that remains undischarged shall be postponed to the adjourned meeting."



No. <sup>(D 1491-171)</sup>  
~~2712/17~~ L. S. G. R.

GOVERNMENT OF BIHAR AND ORISSA  
(MINISTRY OF LOCAL SELF-GOVERNMENT).

M. G. HALLETT, Esq., I.C.S.,  
Secretary to Government,

THE CHAIRMEN OF ALL <sup>(1) DISTRICT BOARDS.</sup>  
<sup>(2) MUNICIPALITIES.</sup>

Ranchi, the 30th June, 1923.

Subject.—Interpellations at meetings of district boards and municipalities.

SIR,

I am directed by Government in the Ministry of Local Self-Government to forward for your information a copy of a model rule for interpellations at meetings of district or local boards. The rule may be adopted by district & municipalities local boards subject to the sanction prescribed by sec. 32 of the Bengal Local Government A. t. 1923 ties subject to the approval of the Local Government under sec. 32 of the B. & O. Municipal Act.

2. In this connection, I am to explain that although under the existing law, chairman of district or local boards municipalities cannot be compelled to answer a question members of these bodies clearly have the right to ask questions and it is desirable that the information asked for should be supplied as far as practicable.

I have the honour to be,

SIR,

Your most obedient Servant,

M. G. HALLETT,

Secretary to Government.

MODEL RULE FOR INTERPELLATIONS AT MEETINGS OF  
DISTRICT OR LOCAL BOARDS AND MUNICIPALITIES.

(a) Any member commissioner of a district or local board who has given forty-eight hours clear notice to the Secretary or Chairman before the time of meeting, may before other business commences, ask a question or questions of the Chairman relating to the affairs of the district or local board municipality. No debate shall be allowed on any question. When he thinks it advisable to do so, the Chairman shall have the answer to such question printed or typed and laid before the meeting.

(b) Questions shall not be argumentative or hypothetical, or defamatory to any person or any section of the community.

(c) The Chairman may disallow any question which does not conform to sub-rule (b).

(d) The question, unless it has been disallowed by the Chairman, and the answer, if any, given to it, shall be entered in the minutes of the proceedings of the meeting.

N. B.—Municipalities may adopt the above rule in supersession of rule 11A of the existing model rules. In the case of district and local boards this rule may be numbered 16A.

No. 3508-97-L. S.-G. R.

GOVERNMENT OF BIHAR AND ORISSA  
(MINISTRY OF LOCAL SELF-GOVERNMENT).

FROM

M. G. HALLETT, Esq., I.C.S.  
*Secretary to Government,*

TO

ALL COMMISSIONERS OF DIVISIONS,

Ranchi, the 1st October, 1923.

SIR,

I am directed to refer to my letter No. 6785-89-L.S.-G., dated the 22nd September, 1922, on the subject of the election of a president in municipalities under section 28 of the Bihar and Orissa Municipal Act, 1922. Under notification No. 59-L.S.-G., dated the 1st January, 1923, all municipalities in the province of Bihar and Orissa have been excepted from the operation of that section until they are reconstituted under the new Act. The newly elected and appointed municipal commissioners will therefore have to appoint a president in accordance with the provisions of the Act unless they are excepted from this section. Government in the Ministry of Local Self-Government is prepared in this matter to pass orders in accordance with the recommendation of the commissioners. If therefore the commissioners at the first meeting held for the election of officers after the reconstitution of the board are of opinion that a president is not needed they should pass a resolution to that effect and apply to Government for an order excepting them from the provisions of this section. If, on the other hand, they consider the appointment of a president desirable they should proceed to elect him after the election of the chairman and the vice-chairman. It may be observed that in the case of the president there is no bar on nominated members or salaried servants of Government being elected by the municipal commissioners to this post and in some cases the election of a Government officer may commend itself to the commissioners. A copy of this letter has been forwarded direct to the chairmen of all municipalities, and all District Magistrates.

I have the honour to be,

SIR,

Your most obedient Servant,

M. G. HALLETT,

*Secretary to Government.*

GOVERNMENT OF BIHAR AND ORISSA  
(MINISTRY OF LOCAL SELF-GOVERNMENT).

FROM

M. G. HALLETT, Esq., I.C.S.  
*Secretary to Government,*

TO

ALL COMMISSIONERS OF DIVISIONS,

Ranchi, the 19th July, 1928.

SIR,

I am directed to invite your attention to section 73 (2) of the Bihar and Orissa Municipal Act, 1922, which directs that copies of budget estimates as sanctioned by the Commissioners shall be submitted forthwith to the Local Government or to such authority as the Local Government may direct. Government in the Ministry of Local Self-Government do not consider it necessary that copies of the budget estimates should be submitted direct to them in the first instance. They are, therefore, pleased to direct that copies of all budget estimates should be forwarded by the municipal commissioners to the District Officer. It will be the duty of the District Officer to examine the budgets submitted to him and—

- (a) to bring to the notice of Government any important point of which Government should be aware; e.g., that the municipality was rapidly going bankrupt, or was mispending the grants given to it by Government for specific purposes; and
- (b) to distribute extracts showing details of the income and expenditure under the heads "Education" and "Medical" to the local officers concerned; viz., in the case of the Education budget to the Divisional Inspector of Schools, and in the case of the Medical budget to the Civil Surgeon. The Inspector of Schools or the Civil Surgeon would bring to the notice of the Director of Public Instruction or the Inspector-General of Civil Hospitals (as the case might be) any points on which he considered that these budgets were defective and the latter, if need be, would take the orders of Government.

It must be clearly understood that these orders are not intended to increase the powers of control to be exercised by the District Magistrates over municipalities and that his powers remain as defined in the Act. His duty is limited in this respect to bringing to the notice of Government, through the usual channel, any points of importance which he notices in the budget estimates.

2. Copies of this letter have been sent to all District Officers and Municipalities.

I have the honour to be,  
SIR,

Your most obedient Servant,  
M. G. HALLETT,  
*Secretary to Government.*

No. 2000-2004-L.S.-G.R.

**GOVERNMENT OF BIHAR AND ORISSA  
(MINISTRY OF LOCAL SELF-GOVERNMENT).**

From

**M. G. HALLETT, Esq., I.C.S.**

*Secretary to Government,*

To

**ALL COMMISSIONERS,**

**Ranchi, the 12th July, 1928.**

Sir,

I am directed to refer to section 48 (2) of the Bihar and Orissa Municipal Act, 1922, which directs that a copy of the minutes of the proceedings of all meetings of commissioners shall be forthwith forwarded to the Local Government or to such authority as the Local Government may direct. In exercise of the powers conferred by this section, Government, in the Ministry of Local Self-Government, are pleased to direct that copies of all municipal proceedings shall be forwarded to the District Magistrate of the district in which the municipality is situated. It will be for the District Magistrate to bring to the notice of Government any matter of which the latter should be aware, such as resolutions which in the opinion of the District Magistrate are objectionable or which appear to him to be in excess of the powers conferred by law. It must, however, be distinctly understood that the District Magistrate's powers of control remain as defined in the Act, in particular, by clause (1) of section 888, which empowers him in an emergency to suspend the execution of a resolution if in his opinion it is likely to lead to serious breach of the peace or to cause serious injury to the public or to any class of persons, and it is not intended that the new procedure should increase his powers of control or authorize him to interfere with the work of the municipal commissioners further than is authorized by law.

2. This procedure has been adopted with a view to keeping the District Magistrate and through him the Local Government informed of what is being done by a municipality, while at the same time relieving Government from the scrutiny of anything that is not of importance.

3. Copies of these orders have been sent to all District Magistrates and Municipalities.

I have the honour to be

Sir,

Your most obedient Servant.

**M. G. HALLETT,**

*Secretary to Government.*

**GOVERNMENT OF BIHAR AND ORISSA  
(MINISTRY OF LOCAL SELF-GOVERNMENT).**

From

**M. G. HALLETT, Esq., I.C.S.**  
*Secretary to Government,*

To

**THE CHAIRMAN OF**

**MUNICIPALITIES,**

**Dated, Patna, the 26th February, 1928.**

Sir,

I am directed to invite your attention to section 326 of the Bihar and Orissa Municipal Act which empowers the Commissioners at a meeting to make by-laws to regulate vehicles plying for hire for the conveyance of passengers. It is desirable that in those municipalities in which the Calcutta Hackney Carriage Act was in force, by-laws should be framed under this section without delay. To assist Municipal Commissioners in this work, Government have framed model by-laws, a copy of which is enclosed. These by-laws will need to be adapted to local conditions in particular in regard to such matters as the rate of fees for registration of drivers' licenses, and the rate of fares, while in other respects they may prove capable of improvement.

2. Before explaining in detail the model by-laws I am to invite attention to the main differences between the Bengal Municipal Act and the Bihar and Orissa Municipal Act. Under the Bengal Municipal Act in those municipalities in which the Calcutta Hackney Carriage Act was also in force, hackney carriages were liable to pay the fees fixed under sec. 181 of the Municipal Act in respect both of the carriage and the animals used therein and also the fees fixed by sec. 10 of the Hackney Carriage Act. Under the present Act, vehicles and animals registered under Chapter X are specifically exempt from the tax on vehicles, horses and other animals by clause (b) of sub-section 3 of section 137. In view of the substantial difference between the two Acts it is necessary in any by-law framed under sec. 326 to provide that the registration fee shall be at least equal, if not larger than what would be payable under sec. 137.

3. The present Act is considerably wider in its scope than the Acts which are now repealed and gives the Commissioners powers not only over carriages plying for hire but also over motor vehicles. In towns in which vehicles such as "push-pushes" or "jin-rickshaws" are plied for hire, the Commissioners will be able to frame by-laws to control those vehicles should they consider it necessary. Model by-laws for such vehicles have not yet been framed, but the Commissioners might suitably adapt the provisions of Chapter VII of Calcutta Hackney Carriage Act regarding palanquins to such vehicles. Further, the Calcutta Hackney Carriage Act provided for only three classes of carriages, which have been defined in the by-laws under that Act which were in force in some municipalities. Under the present Act it is possible to provide for more than three classes of carriages and to differen-

## **MODEL BY-LAWS**

tiate, for instance, between "ekkas" and "bundgharies" and to frame by-laws applicable to these two different types of vehicles.

4. Further under the Hackney Carriage Act, the rate of fares was fixed by the Act itself and this was not capable of modification to suit local conditions or to meet any increase in the cost of maintaining a hackney carriage. Since the Act was passed, the large increase in prices and wages justifies a higher rate of fares than that hitherto in force while, further, if the fares are increased, it will not be inequitable to raise the fees imposed on those vehicles, and thereby increase to some extent the income of the municipality. It may be noted that all receipts under this head will now be credited to the general municipal fund and not to the separate Hackney Carriage Fund.

5. Finally, it is possible for the Commissioners under the powers now conferred, to improve to a considerable extent the vehicles plying for hire and to render them more convenient for the general public, and also to prevent the use of weak, under-sized, lame and sickly horses and ponies. A detailed examination of the horses and ponies used in hackney carriages made some years ago in some of the larger towns of the province, showed that the ponies were in most cases too small for the loads which they had to draw and in many cases in bad condition owing to neglect or ill-treatment. It is to be hoped that the Commissioners will use the powers now given to them to prevent unnecessary suffering to these dumb animals.

6. In framing by-laws under this chapter the procedure prescribed by sections 354 and 356 of the Act should be carefully followed and every opportunity should be given to persons affected by the by-laws to express an opinion thereon. After those opinions have been considered the Commissioners should finally approve the by-laws and submit them to the Local Government through the Commissioner and District Magistrate for confirmation.

I have the honour to be,

SIR,

Your most obedient Servant,

R. N. BHATTACHARJI,

*for Secretary to the Government.*

*[These are only models of what by-laws ought to be. Each Municipality has to frame its by-laws by its Commissioners at a meeting and publish them according to sec. 356 and send them for confirmation to the Local Government, and after such confirmation and publication in the Gazette they will come into force.]*

## MODEL BY-LAWS UNDER SECTION 326 OF THE BIHAR AND ORISSA MUNICIPAL ACT, 1922.

### DEFINITIONS.

1. In these by-laws unless there be something repugnant in the subject or context :—

- (1) " The Act " means the Bihar and Orissa Municipal Act, 1922.
- (2) All words and expressions used in these by-laws have the same meaning as in the Act.
- (3) " Registering Officer " means the person appointed by the Commissioners at a meeting for the registration of vehicles plying for hire.

*Explanation.*—The Commissioners may appoint the Chairman or Vice-Chairman or one of their own number or any officer or servant of the Commissioners to be the " Registering Officer."

- (4) *Carriage* means a four-wheeled springed vehicle drawn by one or two horses.

*Illustration*—a " phaeton ghari," " bund or palki ghari " is a carriage.

- (5) *Ekka* means a two-wheeled vehicle drawn by one horse.

*Illustration*—a " tumtum," Allahabad tumtum, bamboo cart or other vehicle of similar description is an " ekka."

- (6) *Motor Vehicle* means a vehicle which is propelled or may be propelled on a road by electrical or mechanical power either entirely or partially.

### REGISTRATION OF VEHICLES PLYING FOR HIRE

Annual registration. 2. All vehicles plying for hire for the conveyance of passengers in the municipality shall be registered annually by the Registering Officer.

Classes of vehicles. 3. For the purpose of registration, vehicles plying for hire shall be divided into the following classes :—

- (a) Motor Vehicles—Class I
- (b) Motor Vehicles—Class II
- (c) Carriages—Class I
- (d) Carriages—Class II
- (e) Carriages—Class III
- (f) Ekkas—Class I
- (g) Ekkas—Class II

### GENERAL.

Application for registration. 4. The owner of any vehicle who is desirous of registering it as a vehicle plying for hire shall submit an application to the Registering Officer in Form A.

**Inspection of vehicles.** 5. The owner shall produce the vehicle for inspection, and in the case of a vehicle drawn by animals, the animals intended to be used in such vehicle before the Registering Officer at the time of applying for registration and at such other times as the Registering Officer may direct.

**Grant of certificates** 6. Subject to the provisions of these by-laws, the Registering Officer shall decide in which class a vehicle shall be registered, shall grant a certificate of registration (Form B) duly signed by him to the owner on payment by the owner of the fees specified in Schedule I and shall cause the necessary entries to be made in the register.

**Duration of certificates.** 7. All certificates of registration shall be in force for one year from the date of registration unless sooner cancelled or suspended under these by-laws.

**Transfer of owner -** 8. (1) Whenever any change shall take place in the ownership of a vehicle plying for hire, if the person to whom such vehicle shall have been transferred, shall desire to use it to ply for hire, he shall before so using it give to the Registering Officer notice in writing of such transfer and shall produce before him the certificate of registration granted to the former owner and shall pay a fee of one rupee

(2) If any such person shall before giving such notice as aforesaid use such vehicle to ply for hire, he shall be liable to a fine not exceeding five rupees for every day during which he shall so use the same.

(3) The Registering Officer on receiving the notice and the fee specified in clause (1) shall make the necessary alteration in the register and in the certificate of registration.

**Penalty for use of unregistered vehicle** 9. Whoever being the owner of any vehicle plies or allows it to be plied for hire without having a valid certificate of registration granted under these by-laws shall be liable to a fine not exceeding fifty rupees and if he shall continue to ply or allow such vehicle to be plied for hire, will be liable to a further fine not exceeding five rupees for every day after the first conviction during which he is proved to have plied or allowed such vehicle to be plied for hire.

#### OF THE REGISTRATION OF MOTOR VEHICLES PLYING FOR HIRE.

**Registration of motor vehicles** 10. (1) The owner of a motor vehicle when applying for registration shall produce before the Registering Officer the permit granted under the Indian Motor Vehicles Act, 1914

(2) If the Registering Officer finds the permit valid and in order he shall register the motor vehicle and grant to the owner thereof the certificate of registration. If the Registering Officer finds the permit defective, he shall not register the motor vehicle till the owner thereof has produced a valid permit.

(3) Motor vehicles of which the weight unladen is less than one ton shall be registered in Class I. Motor vehicles of which the weight unladen is one ton and over shall be registered in class II.

#### OF THE REGISTRATION OF CARRIAGE PLYING FOR HIRE.

**Refusal to register Carriage.** 11. No carriage shall be registered, if  
(a) the carriage is in the opinion of the Registering Officer unfit for public use; or



- (b) if the horse or horses to be used in the carriage is or are unfit by reason of any disease, infirmity, wound, sore or other cause to be so used; or
- (c) if the horse or horses is or are under 8 years of age; or
- (d) if the harness is not of strong leather and in good condition and if all chain or rope traces are not covered with leather; or
- (e) if the bit is such as to cause unnecessary suffering to the horse, e.g., a Katali bit.

Carriages class I. 12. No carriage shall be registered in class I unless—

- (a) it is a comfortable, clean, roomy, easy running vehicle of a description superior in all respects to a carriage in class II. It may be of an approved pattern, e.g., brougham, landau, phaeton, etc.;
- (b) it is provided with a good pair of lamps;
- (c) it is provided with rubber tyres;
- (d) (i) if drawn up by one horse, the horse is not less than 14 hands 2 inches in height and 59 inches in girth;
- (ii) if drawn by two horses each horse is not less than 14 hands in height and 57 inches in girth; and
- (e) a *syce* is employed as well as a driver.

Carriages class II. 13. No carriage shall be registered in class II unless—

- (a) the springs and axles are of good manufacture and all the iron work strongly put together;
- (b) a good pair of lamps is provided;
- (c) a foot-mat or coir or other suitable material and of suitable dimensions is provided;
- (d) the cushions and back cushions are covered with leather or leather cloth and are provided with adequate stuffing and springs—
- (e) if of the type known as Palki gharry or Brownberry it is—
  - (i) of the following dimensions:—
    - Breadth of carriage inside not less than 36";
    - Depth of seat inside, not less than 18";
    - Width of well between seats, not less than 24";
    - Height inside from roof to seat, not less than 40";
  - (ii) has the doors swung on proper hinges and fitted with lock bolts;
  - (iii) is fitted with four hand straps near the doors;
  - (iv) has the roof well covered with a waterproof cover;
- (f) if drawn by one horse, the horse is not less than 14 hands 2 inches in height and 58 inches in girth;
- if drawn by two horses, the horses are not less than 14 hands in height and 57 inches in girth; and
- (g) a *syce* is employed as well as a driver.

Carriages class III 14. No carriage shall be registered in class III unless—

- (a) it has stout steady axles, springs and wheels and is in a clean and safe condition and has sufficient room inside to seat four persons;
- (b) if drawn by a single horse, the horse is not less than 13 hands 2 inches in height and of good condition;

If drawn by a pair of horses each horse is not less than 18 hands in height and of good condition.

Class to be printed on carriage. 15. All carriages registered in classes I, II and III shall have the Roman figures I, II or III, as the case may be, painted clearly on both doors or on the back of the vehicle.

#### OF THE REGISTRATION OF EKKAS.

Refusal to register ekka. 16. No *ekka* shall be registered if—  
(a) in the opinion of the Registering Officer it is unfit for public use; or

(b) if any horse to be used in the *ekka* is unfit by reason of any disease, infirmity, wound, sore or other causes to be so used; or

(c) if any horse to be used in the *ekka* is under 8 years of age; or

(d) if the harness is not sound and in bad condition; or

(e) if the bit or harness is of such a nature as to cause unnecessary suffering to the horse.

Ekkas, class I. 17. No *ekka* shall be registered in class I unless—

(a) it is large enough to carry three passengers apart from the driver and is in clean and good condition; and

(b) if the horse is not less than 18 hands in height and in good condition.

Ekkas, class II. 18. No *ekka* shall be registered in class II unless—

(a) it is large enough to carry two passengers apart from the driver and is in good condition; and

(b) if the horse is not less than 12 hands in height and in good condition.

#### MARKS OF IDENTIFICATION.

Issues of identification plate. 19. (1) On granting a certificate of Registration, the Registering Officer shall deliver to the owner of the vehicle a plate showing—

(a) the number of the certificate;

(b) the period for which the certificate is in force;

(c) the class in which the vehicle is registered;

(d) the number of person which the vehicle is authorised to carry.

(2) The owner of the vehicle shall cause the plate to be affixed to a conspicuous place on the outside of the vehicle.

Penalty for using vehicle without identification plate. 20. If any vehicle shall be let, used or plied for hire without having a proper plate duly affixed as required by By-law 19, the owner thereof shall be liable to a fine not exceeding fifty rupees.

Issue of new plate. 21. (1) Whenever the words or figures on any identification plate shall during the period for which the certificate is in force become indistinct or obliterated, the owner of the vehicle shall deliver such plate to the Registering Officer and shall be entitled to receive a duplicate plate on payment of a fee of one rupee.

(2) Whenever an identification plate shall have been lost or stolen, the owner of the vehicle shall produce the certificate of registration before the Registering Officer and shall be entitled to receive a duplicate plate on payment of a fee of one rupee.

(3) If any vehicle is let, used or plied for hire without an identification plate or with an identification plate which has become indistinct or obliterated, the owner thereof shall be liable to a fine not exceeding ten rupees.

Delivery of plate on expiry. 22. (1) On the expiration or sooner determination of the period for which a certificate of registration is in force, the owner of the vehicle shall cause the identification plate to be delivered to the Registering Officer—

Penalty. (2) If a vehicle is let, used or plied for hire bearing an identification plate after the period for which the vehicle has been registered, has expired, the owner of such vehicle shall be liable to a fine not exceeding twenty rupees.

#### LOADS TO BE CARRIED BY VEHICLES PLYING FOR HIRE.

Loads to be carried 23. (1) A motor vehicle registered under these by-laws shall not carry more passengers or a greater weight of luggage than specified in the permit granted under the Indian Motor Vehicles Act, 1914.

(2) A carriage registered in the class shown in column 1 shall not carry more passengers or a greater weight of luggage than specified in column 2.

Column 1.	Column 2.
Carriage, Class I	Four passengers.
.. Class II	Four passengers and three maunds of luggage.
.. Class III	Four passengers and one maund of luggage.
Ekka, Class I	Three passengers.
Ekka, Class II	Two passengers.

Provided that (1) the number of passengers shown in column 2 is exclusive of the *syce* and driver in the case of the carriages and exclusive of the driver in the case of *ekkas*.

(2) If the number of passengers is less than the number shown in column 2 luggage of a weight not exceeding one maund may be carried for each passenger in defect of the maximum.

Illustration—a carriage registered in class III can carry 4 maunds of luggage if there is only one passenger.

Penalty for excess load. 24. If any vehicle is used to carry a larger number of passengers or a greater weight of luggage than is specified in the preceding by-law, the owner and the driver shall be liable to a fine not exceeding fifty rupees.

#### DRIVER'S LICENCE.

All drivers to be licensed. 25. (a) No person shall drive a vehicle plying for hire in the municipality unless he is licensed in the manner hereinafter prescribed.

(b) No owner of a vehicle plying for hire in the municipality shall allow any person who is not so licensed to drive any vehicle of which he is the owner.

**Application for licence.** 26. Every application for a licence to drive a vehicle plying for hire shall be made to the Registering Officer in form B annexed to these rules.

**Refusal of licence.** 27. (1) The Registering Officer may on receipt of an application under the preceding rule either grant or refuse the licence, provided that

(1) no licence shall be granted to any person who is under 16 years of age;

(2) if the Registering Officer refuses the licence, he shall record his reason for so doing and shall submit his order to the Chairman for confirmation.

**Form of licence.** 28. Every licence granted under the preceding rule shall be in form D annexed to these rules and shall bear the signature of the Registering Officer.

**Period of licence.** 29. The licence shall continue in force for one year from the date thereof, unless it shall be sooner cancelled, and except for such period as it may be suspended, by an order of the Magistrate under section 881 of the Act or by an order of the Chairman or Vice-Chairman under these by-laws.

**Fee for licence.** 30. (1) For every licence granted under these rules for permission to drive a motor vehicle plying for hire a fee of Rs. 5 shall be paid.

(2) For every licence granted under these rules for permission to a vehicle other than a motor vehicle a fee of Rs. 8 shall be paid.

**Driver's ticket.** 31. (1) The Registering Officer shall at the time of granting the licence deliver to the driver a metal ticket marked or engraved with a number corresponding to the number of the licence, and showing the period for which the licence is in force.

(2) For each ticket granted under this rule a fee of annas four shall be paid.

**Driver to wear ticket.** 32. Every driver shall at all times when acting as driver or appearing before a Magistrate carry such ticket exposed to view.

**Issue of new ticket.** 33. When the writing on any ticket shall during the term of the licence become indistinct or obliterated and also whenever any ticket shall have been lost or stolen, the licensee shall produce such ticket, if it is still in his possession, and his licence before the Registering Officer and shall be entitled to have a duplicate ticket delivered to him on payment of annas eight.

**Delivery of ticket.** 34. Upon the expiration or sooner determination of any licence granted to a driver under these by-laws, the driver shall deliver the licence and the ticket relating thereto to the Registering Officer.

#### OFFENCE RELATING TO DRIVER'S LICENCES AND TICKETS.

**Penalty for not having licence under section 25.** 35. If any person drives a vehicle for hire without having a licence in force for the time being, he shall be liable to a fine not exceeding twenty rupees, and to a further fine not exceeding five rupees for every day after the first conviction during which the offender is proved to have persisted in the offence.

**Penalty for lending licence.** 36. If any person having a licence transfers or lends his licence or the ticket belonging thereto or allows the said licence or ticket to be used by, any other person, he shall be liable to a fine not exceeding twenty rupees.

**Penalty for owner permitting unlicensed driver.** 37. If the owner of any vehicle plying for hire permits or suffers any person not duly licenced as a driver under these by-laws to drive or ply for hire any vehicle of which he is the owner he shall be liable for every such offence to a fine not exceeding fifty rupees, and to a further fine not exceeding five rupees, for every day after the first conviction during which the offender is proved to have persisted in the offence.

**Penalty for not wearing ticket.** 38. If any driver licenced under these by-laws fails to wear his ticket exposed to view when plying a vehicle for hire or when appearing before a Magistrate he shall be liable to a fine not exceeding ten rupees.

**Penalty for using indistinct ticket.** 39. If any driver licenced under these by-laws continues to wear or use a ticket after the writing thereon has become indistinct or obliterated he shall be liable to a fine not exceeding ten rupees.

**Penalty for failing to deliver lost ticket when recovered.** 40. If any ticket which has been proved to have been lost or stolen shall subsequently be recovered, and if any person in or into whose possession such ticket is or comes refuses or neglects for three days to deliver the same to the Registering Officer he shall be liable to a fine not exceeding ten rupees.

**Penalty for failing to deliver up expired licence and ticket.** 41. If any driver neglects for three days to deliver up to the Registering Officer any license or ticket, the period of validity of which has expired he shall be liable to a fine not exceeding ten rupees.

#### OFFENCES BY DRIVERS.

**Penalty on driver.** 42. A driver of a vehicle plying for hire who shall—

- (a) be drunk while driving or in charge of such vehicle;
- (b) make use of insulting or abusive language or gesture;
- (c) stand (elsewhere than at some stand or place appointed for the purpose) or loiter for the purpose of being hired in or upon any public road or public place;
- (d) allow his vehicle to stand for hire across any street or alongside any other vehicle;
- (e) refuse to give way (when he reasonably and conveniently may do so) to any other vehicle;
- (f) wilfully obstruct or hinder the driver of any other vehicle in taking up or setting down any person into or from such other vehicle;
- (g) wrongfully prevent or endeavour to prevent the driver of any other vehicle from being hired;
- (h) demand or take more than the fare to which he is legally entitled;
- (i) refuse to admit or convey in his vehicle the number of persons or the weight of luggage specified on the plate affixed to the vehicle or in the certificate of registration;

(j) carry a number of passengers or a weight of luggage in excess of the number or weight specified on the plate affixed to the vehicle or in the certificate of registration;

(k) when hired by time, desert from the hiring before he has been discharged by the hirer;

(l) ply for hire any vehicle which shall be unfit for public use;

(m) use in any vehicle plying for hire (a) any horse other than registered for use in such vehicle, (b) any horse which by reason of any disease, infirmity, wound, sore or other causes is unfit to be so used;

(n) use any bit or harness of such a nature as to cause unnecessary suffering to any horse;

(o) cruelly or unnecessarily beat, over-drive or otherwise ill-treat any horse;

(p) drive a vehicle in a public place recklessly or negligently or at a speed or in a manner which is dangerous to the public;

shall be liable to a fine not exceeding twenty rupees for an offence under clauses (a) to (l); and to a fine not exceeding forty rupees for an offence under clauses (m) to (p).

Cancellation or suspension of a driver's licence.

48. The Chairman or the Vice-Chairman if specially empowered in this behalf by the Commissioners at a meeting on receiving information of the commission of any offences specified in these by-laws and after such enquiries as he thinks fit may in lieu of directing the prosecution of the driver cancel or suspend his licence for such period as he may think fit and may require the driver or any other person in whose possession the licence and the ticket belonging thereto is, to deliver up the same within a period to be specified in the order.

(2) Any driver or other person who being so required refuses or neglects to deliver up such licence and such ticket shall be liable to a fine not exceeding twenty rupees.

(8) The Registering Officer shall cause such order of suspension or cancellation to be noted in the register of licences and if the licence has been suspended, shall on application at the end of the period of suspension cause the licence or ticket to be re-delivered to the person to whom it was granted.

#### PREPARATION OF TABLE OF DISTANCES.

44. (1) The Registering Officer shall cause to be prepared a table of distances showing the distances of the principal places within or outside the municipality from one another and shall furnish a copy thereof to the owner and driver of every registered vehicle.

(2) The driver of any vehicle plying for hire shall at all times carry such table on the said vehicle and show it to any passenger on demand.

(8) If a driver fails to comply with the provision of clause (2), he shall be liable to a fine not exceeding rupees five.

#### FARES.

Fares to be paid for hire. 45. The owner or driver of every vehicle plying for hire shall be entitled to demand and take for such hire the fares specified in schedule II. Provided that—

(1) no owner or driver of a vehicle shall demand or receive over and above the said fare any sum for the return journey of the carriage from the place at which it is discharged;

(2) any contract entered into to accept a fare lower than the fare so fixed shall be binding.

Schedule of fares to 46. (i) The owner of every registered vehicle plying for hire shall keep a copy of the schedule of fares in every such vehicle in such form as the Registering Officer may direct and the driver of every such vehicle shall produce the same on the demand of any passenger.

(ii) The owner or driver of any registered vehicle who fails to comply with the provision of this by-law shall be liable to a fine not exceeding ten rupees.

### SCHEDULE I.

#### FEES PAYABLE BY VEHICLES PLYING FOR HIRE.

Motor Vehicle—Class I.

Motor Vehicles—Class II.

Carriage—Class I.

Carriage—Class II.

Carriage—Class III.

Ekka—Class I.

Ekka—Class II.

### SCHEDULE II.

#### RATES AND FARES TO BE PAID FOR CARRIAGES AND EKKAS PLYING FOR HIRE

Class of Carriage or Ekka.	Fares by distance.	Fares by time	
		For the first hour or any portion thereof.	Every subsequent hour or portion thereof.
Carriage—Class I	At the rate of 12 annas for the first mile and of 9 annas for every subsequent mile or portion thereof.	Rs. A. P. 1 8 0	Rs. A. P. 0 12 0
Carriage—Class II	At the rate of 9 annas for the first mile and of 6 annas for every subsequent mile or portion thereof.	1 0 0	0 8 0
Carriage—Class III Ekka—Class I	At the rate of 6 annas for the first mile and of four annas for every subsequent mile or portion thereof.	0 8 0	0 4 0
Ekka—Class II	At the rate of four annas for every mile or portion thereof.	0 6 0	0 3 0

**FORM A.****APPLICATION FOR REGISTRATION OF VEHICLE PLYING FOR HIRE.**

1. Name, father's name and residence of applicant.
2. Description of vehicle.
3. If previously registered, number and date of previous certificate.
4. If a motor vehicle, number and date of permit under Indian Motor Vehicles Act.
5. Description of horses—
  - (a) Height
  - (b) Girth
  - (c) Colour
  - (d) Age
  - (e) Sex
6. Place where vehicle is intended to be kept.
7. Class in which the applicant desires the vehicle to be registered.

Signature of Applicant.

*N. B.*—The certificate of registration will be in the same form as the application, will bear the Municipal Seal and will be signed by the Registering Officer.

**FORM B.****APPLICATION FOR DRIVER'S LICENCE.**

1. Name, father's name and address of applicant.
2. Age.
3. Description of vehicle which applicant wishes to drive.
4. If licenced to drive motor vehicle, number and date of driving licence under the Indian Motor Vehicles Act.
5. Number and date of previous licence, if any.

Signature of Applicant.

*N. B.*—The driver's licence will be in the same form as the application and will bear the municipal seal and be signed by the Registering Officer.



## NOTES ON MODEL BY-LAWS.

**By-law 1 (3)** The term " Registering Officer " has been defined so as to give the Commissioners a free hand in the appointment. It will probably prove convenient, at least in the smaller municipalities, for the power to be exercised by the Chairman or Vice-Chairman but in the large municipalities the employment of a special Registering Officer may be necessary. In such cases it may be desirable to modify the rules so that the decision of the Registering Officer shall be subject to confirmation by the Chairman or Vice-Chairman.

**By-law 5.** If the Commissioners consider it desirable, provision may be made in this by-law for examination of all animals by the local Veterinary Assistant.

**By-law 6.** The fees to be paid for registration will have to be fixed with reference to local conditions; but it must be noted that if vehicles pay fees under this by-law, they will be exempt from the tax on vehicles, animals, etc., imposed by section 187 of the Act. The following points also deserve special consideration :—

(a) Motor vehicles have been divided into two classes accordingly to the weight of the vehicles; class I will include " taxis " while class 2 will include motor omnibuses, etc. The maximum fees payable under section 187 read with the first schedule of the Act, would probably be Rs. 40 annually for motor omnibuses and Rs. 24 or Rs. 16 for motor taxis. In fixing the fees regard must also be had to the fact that under these rules framed under the Indian Motor Vehicles Act, motor vehicles plying for hire have to pay the following annual fees :—

If the weight unladen is less than one ton.....	Rs. 50.
If the weight unladen is one ton and less than two tons.....	Rs. 100.
If the weight unladen is two tons and less than three tons.....	Rs. 200.
If the weight unladen is three tons and less than four tons.....	Rs. 300.
If the weight unladen is four tons and over.....	Rs. 400.

These fees are now being credited to the municipality or district board in whose jurisdiction the motor vehicle is plied. It is undesirable to fix the fees at a very high rate as this may have the result of preventing the development of these vehicles which are of great use to the general public. The fees, however, may suitably be fixed with reference to the fares charged.

(b) The maximum taxes payable annually under the first schedule of the Municipal Act for tax on carriages would be as follows :—

	Rs.
(1) Four-wheeled carriage with two horses ..	20 + 16
(2) Ditto one horse ..	10 + 8
(3) Ditto two ponies ..	20 + 8
(4) . Ditto one pony ..	10 + 4
(5) Two-wheeled carriage with one pony ..	8 + 4

The fees for carriages and *ekkas* might suitably be fixed with reference to these maxima. A pony is defined in the Act as meaning a horse not exceeding fourteen hands in height.

**By-law 10** As all motor vehicles plying for hire are required to be registered under the Indian Motor Vehicles Act, it is necessary that only those vehicles should be registered which have such a permit.

**By-laws 11 to 14.** These are framed on the lines of the by-laws under the Hackney Carriage Act at present in force in certain municipalities and in particular with a view to preventing unsuitable horses being used in such carriages. The height and girth to be used have been specified.

**By-laws 16 to 18** Provision has been made for the separate registration of *ekkas* as the other provisions of the by-laws, e.g., loads to be carried and fares, should be different for this class of vehicle. Here again, model by-laws have been framed with a view to prevent the use of unfit animals.

**By-laws 19 to 22.** These follow the provisions of the Hackney Carriage Act. A further point to be considered by Municipal Commissioners in adopting these by-laws is whether identification marks should be made on the animals employed in the carriages. It is possible to brand horses or ponies on the hoof and any mark so made will last for six months. If this identification mark is considered necessary it would be desirable to insert a by-law to the following effect—

“ The Registering Officer shall cause every horse registered for use in a carriage or *ekka* to be branded on the hoof with some distinguishing mark. Every horse so branded shall be produced before the Registering Officer after the expiry of six months for the renewal of the identification mark.”

Arrangements can be made with the local veterinary assistant for branding horses in this way.

**By-law 23.** At present vehicles plying for hire are frequently grossly over-loaded thereby causing unnecessary suffering to the horses or ponies used. This by-law is designed to prevent this abuse but the details of it should be notified to suit local conditions.

**By-laws 25 to 42.** These generally follow the lines of the Hackney Carriage Act but in by-law 42 provision has been made for an enhanced fine in cases of offences of cruelty to the animals employed.

**By-law 43.** In view of section 375 of the Bihar and Orissa Municipal Act, the registering officer cannot be empowered to sanction prosecution and this must be done by the Chairman or Vice-Chairman if powers have been delegated to the latter. For this reason it is desirable that cancellation or suspension of a driver's licence in lieu of prosecution should be ordered by the Chairman or Vice-Chairman.

**By-law 45.** The fares payable will be specified in schedule II and this must be fixed with reference to local conditions. The fares at present fixed by the Calcutta Hackney Carriage Act are obviously too low and it appears reasonable to increase these by at least fifty per cent.

# **RULES FOR THE PREPARATION, SUBMISSION AND EXECUTION OF SANITARY PROJECTS.**

Bihar and Orissa Government Notification No. 2515 M. R., dated the 9th November, 1920. In exercise of the powers conferred by clause (i) and (ii) of sub-section (1) of section 69 of the Bengal Municipal Act, 1884 (Bengal Act III of 1884), and by clauses (e) and (m) of section 138 of the Bengal Local Self-Government Act 1885 (Bengal Act III of 1885), and in supersession of the existing rules the Lieutenant-Governor in Council is pleased to make the following rules for the preparation and submission and execution of sanitary projects by local authorities. (As amended by B. and O. Government Notification No. 1186 L. S. G., dated the 9th of February, 1922):—

## **SCHEMES AND PROJECTS.**

1. (1) Whenever a Local Authority desires to undertake a project for water supply, or sewerage, or a comprehensive scheme of surface drainage, or the improvement or extension of existing works of these descriptions, it shall cause to be drawn up an outline project demonstrating its scope and practicability and approximate cost, but before the project is worked out in detail the local authority shall satisfy itself from an examination of the preliminary data in consultation with the Superintending Engineer of Public Health Department that the project is financially possible.

(2) Such outline project may be drawn up either (a) by the Superintending Engineer of Public Health Department at the special request of the local authority and with the approval of the Sanitary Board, or (b) by any firm or person approved by the Superintending Engineer of Public Health Department.

(3) In the case of (b) in sub-rule (2) the outline project while in course of preparation shall be subject to the examination and control of the Superintending Engineer of Public Health Department.

(4) The Superintending Engineer of Public Health Department shall in all cases act as adviser of the local authority.

2. (1) When the outline project has been drawn up under rule 1 and it is estimated to cost Rs. 10,000 or more, or in the case of an estimate of less than Rs. 10,000 if the financial assistance of Government is desired, or if the project is a part of a larger one, the local authority shall submit it to the Sanitary Board through the Commissioner of the Division together with a statement, showing how it is proposed to meet the initial and recurring cost.

*Note :—The Superintending Engineer, Public Health Department, Bihar and Orissa, in his letter No. 00926—80, dated 13th February, 1922, to all Commissioners issued the following instructions :—*

*The special attention of all the Municipalities and District Boards may be drawn to this rule (rule 2) and it may be made clear to them that a Sanitary Scheme when financed by Government must be submitted to the Sanitary Board whatever may be its estimated cost.*

*It is only in the case of a project the total estimated cost of which is less than Rs. 10,000 and which is neither part of a larger scheme nor one for which financial assistance from Government is required the administra-*

*live approval of Government is not necessary, but even in these cases where a project is estimated to cost more than Rs. 1,000, the Superintending Engineer, Public Health Department shall be consulted and the project with a copy of the Superintending Engineer's opinion on it shall be submitted to the Commissioner of the Division for approval.*

(2) The Sanitary Board after considering the project, may, if it is within their power of sanction, either accord or refuse administrative approval: if the project requires the sanction of Government, they shall forward it to the Municipal Department with their opinion upon the technical, financial and other aspects of the schemes and in the case of schemes relating to local areas under the control of two or more local authorities, with proposals for the distribution of the costs under section 37E of the Bengal Municipal Act.

(8) In the case of a project the total estimated cost of which is less than Rs. 10,000 and which is neither part of a larger scheme nor one for which financial assistance from Government is required the administrative approval of Government shall not be necessary: but in cases where the project is estimated to cost more than Rs. 1,000 the Superintending Engineer of Public Health Department shall be consulted and the project, with a copy of the Superintending Engineer's opinion on it, shall be submitted to the Commissioner of the Division for approval.

8. In order to obtain administrative approval of any project, the local authority shall satisfy Government—

- (1) that the cost of maintenance of the projected work can be met by the local authority from revenue;
- (2) that the work can be done effectually in the manner and for the cost proposed.

4. (1) After administrative approval has been given, or with the previous sanction of Government, before such approval, the local authority may arrange for the preparation of detailed plans and estimates, and for this purpose may—

(a) apply to the Sanitary Board for the services of the Superintending Engineer of Public Health Department; or

(b) with the previous sanction of Superintending Engineer of Public Health Department and subject to his supervision and control,

(i) have the plans and estimates prepared by one of its own officers or by an officer specially appointed for the purpose, or by a private firm,

(ii) apply to the District Board for the services of the District Engineer.

(2) Before detailed plans and estimates are prepared the draft scheme shall be open to inspection by the public at the office of the local authority for a fortnight.

5. (1) The detailed plans and estimates shall, on completion, be forwarded in duplicate to the Sanitary Board, through the Commissioner of the Division, or for final sanction of the Commissioner of the Division, as the case may be, together, in the former case, with the particulars required under section 37F of the Bengal Municipal Act and if a loan is required, with an application in the prescribed form, and in the latter case, with a

of the Superintending Engineer's opinion on the scheme as finally drawn up.

(2) In the case of schemes for the improvement and extension of existing works, the particulars mentioned in sub-rule (1) shall be accompanied by a statement showing in detail the financial position of the water-supply fund.

(3) In the case of drainage schemes, the estimates shall be submitted in forms to be obtained from the office of the Superintending Engineer of Public Health Department.

(4) When the scheme has not been prepared in the Superintending Engineer's office, it shall be accompanied by full details of the calculations of the sizes and strength of the various works and complete information as to the prices on which the estimates have been framed.

(5) The Sanitary Board shall have power to sanction any scheme to which it has given administrative approval. In other cases it shall submit the scheme to the Local Government in the Municipal Department, with an expression of its opinion on the merits of the scheme as finally drawn up.

(6) Schemes which will be executed by the Public Works Department as contribution work shall receive the technical sanction of the Government in the Public Works Department and need not be submitted for such sanction to the Sanitary Board or the Local Government in the Local Self-Government Board Department as the case may be (*Vide* Government Notification No. 1186 L. S. G., dated 9th February, 1922).

6. No work shall be commenced on the project, nor shall any agreement be entered into in respect thereof, until the detailed plans and estimates have received the final sanction of the authority which gave administrative approval.

7. (1) If, at any time during the progress of the work, the local authority has reason to anticipate that the sanctioned detailed estimates will be exceeded by more than ten per cent., or if it shall at any time appear to the local authority that the sanctioned detailed scheme will require material alteration, the local authority shall forthwith submit for approval and sanction a revised scheme with revised estimates and plans.

The revised estimates and plans shall ordinarily be prepared by the Engineer who drew up the original plans and estimates and shall be countersigned by the Superintending Engineer of Public Health Department in those cases where the schemes have not been prepared by him.

(2) The revised estimates shall be in the form prescribed for the purpose in the Public Works Department.

#### **CONSTRUCTION.**

8. (1) The Superintending Engineer of Public Health Department shall exercise complete supervision over the carrying on of all schemes of water supply, sewerage and drainage, which are estimated to cost not less than Rs. 50,000 and if the local authority so request, shall also have complete control, provided that in all cases of schemes to which Government has made grant of not less than half the total cost of the scheme, the Superintending Engineer of Public Health Department shall exercise both supervision and control.

(2) In other cases the local authority may request the Superintending Engineer of Public Health Department to take over supervision and control

of the work and on that authority undertaking to pay the percentages prescribed in Rule 27; the Superintending Engineer shall, if he considers that he can so arrange without detriment to the public service, take over such supervision and control.

(8) The local authority shall bear all law charges on behalf of Government in any suits brought by contractors or others in connection with the execution of any project under this rule in which Government or its officers may be joined as parties with the local authority or its representatives; provided that no charge shall be payable by the local authority under sub-rule (8), if, in the opinion of the Government, the suit is due to the malfeasance or negligence of the Superintending Engineer, or any officer subordinate to him.

9. The local authority shall satisfy the Superintending Engineer of Public Health Department that adequate provision has been made for engineering supervision in any scheme which it undertakes.

10. Construction may be carried out either (1) by the Public Works Department as a contribution work or (2) by such other agency as the Superintending Engineer of Public Health Department may approve. In both cases the work will be subject to inspection of the Superintending Engineer.

(8) A work of special magnitude or importance may be carried out by the Superintending Engineer of Public Health Department with the sanction of Government after consultation with the Sanitary Board.

11. Where the estimated cost of works amount to less than Rs. 10,000, the local authority shall report for the information of the Commissioner of the Division, the agency by which it is proposed to have the works carried out and shall follow the instructions issued by him in the matter.

11A. In the case of works carried out under clause (1) of rule 10, paragraphs 280-284 of the Public Works Department Code shall be strictly followed. The local authority shall supply to the Public Works Department a report, working drawings, specifications, estimates and bills of quantities required for the execution of the work duly approved by the Superintending Engineer, Public Health Department. The Public Works Department will call for and accept tenders for such works in consultation with the Superintending Engineer of Public Health Department. (*Vide* B. & O. Government Notification No. 1186 L. S. G., dated 9th February, 1922).

#### TENDERS AND CONTRACTS.

12. As regards the submission of tenders and contracts for the execution of works, the following procedure (rules 13 to 24) shall be adopted subject to the special provisions of rules 11A in the case of works to be carried out under rule 10 (1).

13. When requested by the local authority, the Superintending Engineer of Public Health Department shall prepare working or contract drawings, specifications, estimates, bills of quantities, forms of tender and other documents or plans required for the execution of Sanitary Engineering Works which have been duly sanctioned and which are to be let out by contract, as well as forms of advertisements inviting tenders for such works.

14. When drawings, specifications, bills of quantities, forms of tender and other documents referred to in rule 13 are not prepared by the Superintending Engineer of Public Health Department, such drawings, specifications, and other documents shall be submitted to the Superintending Engineer of Public Health Department for his approval in writing, before tenders for the contract for such work are invited by advertisement in the public press or otherwise.

15. Every advertisement for tenders shall briefly describe the works required to be carried out, the place or places where plans and drawings can be seen and copies of the specifications and forms of tenders obtained, the deposit to be paid by any person making a tender and the date and hour up to which tenders will be received by the Chairman or the Vice-Chairman of the local authority.

16. The plans, drawings specifications, bills of quantities, forms of tenders and advertisements shall be formally approved by the local authority in meeting. Whenever the said authority desires to make any alteration in any one of such documents, the Superintending Engineer of Public Health Department shall be informed and his advice obtained with regard to such alteration.

17. All tenders shall be submitted in sealed covers addressed to the Chairman or the Vice-Chairman of the local authority, and such officer shall attend in person at the office of that authority, or at any other place to which it may be directed that tenders shall be forwarded, at the latest hour specified in the advertisement for the receipt thereof. Any tender received after such hour shall be out of order and shall not be accepted.

18. The Chairman or the Vice-Chairman of the local authority shall himself open the tenders, shall number each tender, and shall note thereon the exact time at which it was opened.

19. After the tenders have been opened, they shall be either—

- (a) in the case of works to be carried out under Rule 10 (3) sent to the Superintending Engineer of Public Health Department, or
- (b) in the case of works carried out under Rule 10 (2) under the supervision of the agency employed by the local authority and approved by the Superintending Engineer of Public Health Department as being competent to advise on these questions handed to such agency; provided that in the case of 10 (2) the agency of the local authority, shall, in case of difficulty or uncertainty, consult the Superintending Engineer of the Public Health Department (as amended by Government Notification No. 1186 L. S. G., dated 9th February, 1922).

20. The Superintending Engineer of Public Health Department or the agency of the local authority, as the case may be, shall after checking and scrutinizing the tenders, return them to the local authority with his remarks and recommendations (as amended by Government Notification No. 1186 L. S. G., dated 9th February, 1922).

21. The local authority shall thereafter consider the tenders in meeting and either accept one of them provisionally or, if necessary or desirable, refer the question to the Superintending Engineer of Public Health Department for further advice,

22. No tender shall be accepted which is not in order, is not fully priced out and is not in every way in accordance with the instructions contained in the advertisement inviting such tenders. Any alteration or reduction in a tender made by the person making the tender, after the same has once been submitted, shall (except in the case of a palpable arithmetical error) at once render the tender out of order.

23. If it is found that none of the tenders submitted is satisfactory or if, for any reason it is believed that the conditions of tendering have not been properly understood, so that fair tenders have not been received all such tenders shall be discharged and fresh tenders shall be advertised for.

24. After a tender has been provisionally accepted, it shall be submitted to the Superintending Engineer of Public Health Department for concurrence together with all other tenders received for the work, and until such concurrence has been intimated, no tender shall be finally accepted by the local authority;

Provided that in case of a difference of opinion between the local authority and the Superintending Engineer of Public Health Department regarding the acceptance of a particular tender, the matter shall be referred to the Sanitary Board, whose decision shall be final and binding on all parties.

#### **FEES.**

25. (1) The following fees shall be leviable by the Sanitary Board from local authorities for the works specified against each:—

- (a) A fee of one and a half per cent. on the estimated cost of all projects and schemes for which detailed estimates and drawings are prepared by the Superintending Engineer of Public Health Department.

Provided that when both detailed estimates and drawings and contract drawings, specifications and forms of tender are prepared by the Superintending Engineer of Public Health Department, an inclusive fee shall be charged of two per cent. on the estimated cost of the works.

- (2) No fees shall be charged for the examination or preparation of drainage projects, the sanctioned estimate for which is less than Rs. 10,000 unless financial assistance is required from Government.

- (3) In calculating the amount of fees under sub-rule (1), the cost of survey, and the cost of land acquisition shall be excluded from the estimated cost.

- (4) As soon as the services for which the above fees are leviable are rendered, the Sanitary Board shall, through the District Magistrate, demand from the local authority concerned, payment of the fees leviable therefor, and the Magistrate on receipt of notice of demand shall recover the said fees and credit them in the local treasury in favour of the Public Works Department and inform the Accountant-General, Bihar and Orissa.

26. When any outline project for a local authority is prepared by the Superintending Engineer of Public Health Department, no charge will be made for his services or for those of his assistants, Government surveyors, draftsmen and tracers; drawing materials and the instruments required for the work will also be provided at Government expense. The local authority shall render reasonable assistance on the spot by providing survey coolies, supplying survey pegs, and fixing bench marks and making trial holes and



shall pay the actual cost of the same. The local authority shall provide a suitable office properly furnished for the use of the surveyors and draftsmen engaged on any such project.

27. (1) The scale of fees to be levied for the supervision and control of works by the Superintending Engineer of Public Health Department under Rule 8 shall be as follows:—

Cost of scheme, excluding the cost of survey and the cost of land acquisition.	Percentage of total final cost of scheme.
Less than Rs. 50,000.	Rs. 5
Rupees 50,000 or more, but less than Rs. 20,000.	Rs. 4½
„ 2,00,000 or more, but less than Rs. 5,00,000.	Rs. 4
„ 5,00,000 or more, but less than 10,00,000.	Rs. 3
„ 10,00,000 or more.	Rs. 2.

(2) The percentages specified in sub-rule (1) shall be payable on the Superintending Engineer's certificate as follows:—

Twenty-five per cent. of the total percentages chargeable on the amount of any separate contract when such contract has been let; an additional 25 per cent. of the amount of the percentages when half the work included in the contract has been completed; a further 25 per cent. of the amount of the percentages when 75 per cent. of the work has been completed; and the balance when the work included in the contract has been satisfactorily finished and the total amount payable on the contract has been fully settled.

Provided that no fees shall be levied—

(a) for works executed by the Public Works Department or the Superintending Engineer's Department and in respect of which percentage charges are payable according to the Public Works Department Code Rules; and

(b) for schemes the control and supervision of which have not been taken over under rule 8 (2).

[The municipalities or district boards may adopt these Model Rules with or without modifications or they may adopt the Civil Service Rules. In these rules wherever the words " District Board " are used they shall be taken to mean " District Board and Municipality."]

**MODEL LEAVE RULES FOR DISTRICT BOARDS AND MUNICIPALITIES ISSUED UNDER THE BIHAR AND ORISSA GOVERNMENT, LETTER NO. 2154-58, L. S. G., DATED THE 19TH FEBRUARY, 1923.**

**CHAPTER I.**

**DEFINITIONS.**

1. Unless there be something repugnant in the subject or context, the terms defined in this Chapter are used in the sense here explained :—

(1) *Average pay* means the average monthly pay earned during the 12 complete months immediately preceding the month in which the event occurs which necessitates the calculation of average pay

*Note—The average pay should be calculated with reference to the period actually spent on duty within 12 complete months immediately preceding the month in which the leave commences. (Vide B. & O. Government letter No. 6412-16, L. S. G., dated the 20th June, 1923).*

(2) *Duty.*—Duty includes :—

(i) Service as a probationer or apprentice, provided that such service is followed by confirmation.

(ii) Joining time; and

(iii) a course of technical instruction or training of the district board, if so directed by special order.

(8) *Joining time* means the time allowed to a district board servant in which to join a new post or to travel to or from a station to which he is posted.

(4) *Leave on average (or half or quarter average) pay* means leave on leave-salary equal to average (or half or quarter average) pay, as regulated by rule 85.

(5) *Leave-salary* means the monthly amount paid by the district board to its servant on leave.

(6) *Lien* means the title of a servant of the board to return in a substantive capacity to a permanent post to which he has been appointed sub-stantively.

(7) *Local fund* means revenues administered by bodies which by law or rule having the force of law come under the control of Government, whether in regard to proceedings generally or to specific matters, such as the sanctioning of their budgets, sanction to the creation or filling up of particular posts, or the enactment of leave, pension or similar rules.

(8) *Local Government*, for the purposes of these rules means the Government of Bihar and Orissa.

(9) *Ministerial servant* means a servant of the district board whose duties are entirely clerical, and any other class of servant specially defined as such by general or special order of the Local Government.

(10) *Month* means a calendar month. In calculating a period expressed in terms of months and days, complete calendar months, irrespective of the number of days in each should first be calculated and the odd number of days calculated subsequently.

(11) *Officiate*—A servant of the board officiates in a post when he performs the duties of a post on which another person holds a lien. A district board may, if it thinks fit, appoint a district board servant to officiate in a vacant post on which no other servant of the board holds a lien.

(12) (a) *Pay* means the amount drawn monthly by a servant of the board as—

- (i) the pay, other than special pay or pay granted in view of his personal qualifications, which has been sanctioned for a post held by him substantively or in an officiating capacity, or to which he is entitled by reason of his position in a cadre, and
- (ii) special pay and personal pay, and
- (iii) any other emoluments which may be specially classed as pay by the Local Government.

(13) *Special pay* means an addition, of the nature of pay, to the emoluments of a post or of a servant of the board granted in consideration of—

- (a) the specially arduous nature of the duties; or
- (b) a specific addition to the work or responsibility; or
- (c) the unhealthiness of the locality in which the work is performed.

(14) *Permanent post* means a post carrying a definite rate of pay sanctioned without any limit of time.

(15) *Personal pay* means additional pay granted to a servant of the district board—

- (a) to save him from a loss of substantive pay due to a revision of pay or to any reduction of his substantive pay otherwise than as a disciplinary measure; or
- (b) in exceptional circumstances, or other personal considerations.

(16) *Substantive pay* means the pay, other than special pay or pay granted in view of personal qualification, which a servant of the board draws on account of a post which he holds substantively or by reason of his substantive position in a cadre.

(17) *Temporary post* means a post carrying a definite rate of pay sanctioned for a limited time.

(18) *Time-scale pay* means pay which, subject to any condition prescribed in these rules, rises by periodical increments from a minimum to a maximum. It includes the class of pay hitherto known as progressive.

(19) *Compensatory allowance* means an allowance granted to meet personal expenditure necessitated by the special circumstances in which duty is performed. It includes a travelling allowance.

## CHAPTER II.

## PAY OF OFFICIATING SERVANTS.

(20) *Pay of officiating servants of the district board.*—A servant of the district board holding one post substantively, if appointed to officiate in another, may not draw enhanced pay on account of the appointment unless the officiating appointment involves the assumption of duties or responsibilities of greater importance or of a different character. This condition is not fulfilled if the two posts are on the same scale of pay.

*Note.*—Two posts are said to be on the same scale of pay when they fall within a cadre or a class in cadre, such cadre or class having been created in order to fill all posts involving duties of approximately the same character or degree of responsibility in a service or establishment or group of establishments; so that the pay of the holder of any particular post is determined by his position in the cadre or class and not by the fact that he holds that post.

8. Subject to the provision of rules 2 and 6, a servant of the district board officiating in a post will draw the presumptive pay of the post. If, however, the presumptive pay of the post, whether permanent or temporary, which he holds substantively is greater than the presumptive pay of the new post, he will draw pay equal to the presumptive pay of his substantive post.

*Note.*—If the post in which a servant of the district board officiates is tenable by a servant of the board of any one of several grades or classes in a cadre, the district board may, permit the officiating servant of the board to draw the pay of any one of such grades or classes.

4. A servant of the district board officiating in a post on a time-scale draws as initial pay the stage of the time-scale next above his substantive pay, if any; provided that, if he has previously officiated in the post or in a post in the same cadre on the same time-scale his initial pay shall not be less than the pay which he drew when last officiating. All officiating service in any stage of the time-scale, whether continuous or not, counts for increment in that stage. If the presumptive pay of the substantive post of the servant of the board at any time exceeds the pay calculated under this rule, he will draw pay equal to that presumptive pay.

*Note.*—The district board may, however, permit the officiating servant of the board to draw an initial pay any stage of the time-scale.

5. When a servant of the board officiates in a post the pay of which has been fixed at a rate personal to another servant of the board the district board may permit him to draw pay at any rate not exceeding the rate so fixed or, if the rate so fixed be a time-scale, not exceeding the lowest stage of the time-scale.

6. A district board, may fix the pay of an officiating servant of the board at an amount less than that admissible under these rules.

7. *Pay of temporary posts.*—When a temporary post is created which may have to be filled by a person not already in service of the board, the pay of the post shall be fixed with reference to the minimum that is necessary to secure the services of a person capable of discharging efficiently the duties of the post.

## CHAPTER III.

## LEAVE.

## SECTION 1.—EXTENT OF APPLICATION.

8. Unless in any case it be otherwise distinctly provided in the terms of appointment of any officer or servant of a Board, the rules in sections I to IV of this chapter apply to all officers or servants of the Board; provided that it shall be open to any person who is in service of the Board at the time when the rules come into force to exercise the option of remaining under the leave rules to which he has hitherto been subject. The intention of exercising this option must be specifically declared to the Chairman of the District Board, within six months of the date on which the rules come into force or, if the officer or servant of the Board be on leave on that date, within six months of his return from leave. Every officer or servant who does not make such a declaration will become subject to the rules in sections I to V of this chapter. The option once exercised is final.

9. On the first occasion hereafter on which any servant or officer of the Board accepts the new rules and takes leave he will be permitted, at his option, to draw, during that portion of his leave which corresponds to privilege leave the pay of the post on which he holds a lien, instead of his average pay without limit.

10. Any officer or servant of the Board, who is on leave on the date on which these rules come into force may, if he does not desire to exercise the option of remaining under the old leave rules, cancel the unexpired portion of his leave and substitute for it any period of leave to which he will be entitled under the new rules. This concession will be subject to the condition that it should not operate to secure to the servant or officer of the Board concerned a larger total period of leave on average pay or its equivalent than he would have been able to enjoy had he been subject to these new rules from the commencement of his leave.

11. Leave is earned under section I to V of this chapter by an officer or servant of the Board holding substantively a permanent post or holding a lien on such a post.

12. Leave is earned by duty only.

13. (a) An officer or servant of the Board who resigns the or is discharged from it on reduction of establishment cannot, if re-employed after an interval, count his former service towards leave without the permission of the authority sanctioning the re-employment.

(b) An officer or servant of the Board who is dismissed or removed from the service, but is reinstated on appeal or revision, is entitled to count his former service for leave unless the appellate or reviewing authority declares that he shall not so count it in whole or in part.

## SECTION II.—GENERAL CONDITIONS.

14. Leave may be granted by such authority as the District Board may empower in this behalf.

15. Leave cannot be claimed as of right. When the exigencies of the service so require discretion to refuse or revoke leave of any description is reserved to the authority empowered to grant it.

## MODEL LEAVE RULES

16. Leave ordinarily begins on the day on which transfer of charge is effected and ends on the day preceding that on which charge is resumed. When joining time is allowed to an officer or servant of the Board returning from leave out of India, the last day of his leave is the day before the arrival of the vessel in which he returns at her moorings or anchorage in the port of debarkation. The District Board, may, however, make rules defining the circumstances in, and the conditions on, which Sundays or other recognised holidays may be prefixed to leave or affixed to leave or joining time.

17. An officer or servant of the Board on leave may not take any service or any employment without obtaining the previous sanction of the District Board.

18. All orders recalling an officer or servant of the Board to duty before the expiry of his leave should state whether the return to duty is optional or compulsory. If the return is optional, he is entitled to no concession. If it is compulsory, he is entitled :—

(a) If the leave from which he is recalled is out of India,—

(i) to receive a free passage to India;

(ii) to count the time spent on the voyage to India as duty for purposes of calculating leave; and

(iii) to receive leave-salary during the voyage to India, and for the period from the date of landing in India to the date of joining his post to be paid leave-salary at the same rate at which he would have drawn it had he not been recalled but returned in the ordinary course on the termination of his leave.

(b) If the leave from which he is recalled is in India, to be treated as on duty from the date on which he starts for the station to which he is ordered, and to draw travelling allowance for the journey, but to draw until he joins his post leave-salary only.

19. No officer or servant of the Board who has been granted leave on medical certificate may return to duty without first producing a medical certificate in the form annexed to these rules. The District Board may require a similar certificate in the case of any officer or servant who has been granted leave for reasons of health, even though such leave was not actually granted on a medical certificate.

20. Unless he is permitted to do so by the authority which granted his leave, an officer or servant of the Board on leave may not return to duty more than fourteen days before the expiry of the period of leave granted to him.

21. An officer or servant of the Board who remains absent after the end of his leave is entitled to no leave-salary for the period of such absence, and that period will be debited against his leave-account as though it were leave on half average pay, unless his leave is extended by the District Board.

### SECTION III—SPECIAL AND ORDINARY LEAVE RULES.

22. The conditions governing admission to the benefits of the special leave rules shall be such as the Local Government may by general or special order prescribe. All officers or servants of the Board not so admitted shall be subject to the ordinary leave rules.

## SECTION IV—GRANT OF LEAVE.

23. A leave account in the form annexed to these rules shall be maintained for each officer or servant of the Board in terms of the leave on average pay.

24. (a) In the leave account of an officer or servant of the Board who on his entry into the service of the Board becomes subject to these rules, shall be credited:—

- (i) If he be under the special leave rules five-twenty-seconds of the period spent on duty; and
- (ii) If he be under the ordinary leave rules, two-elevenths of the period spent on duty.

(b) In the leave account of an officer or servant of the Board who is already in the service of the Board when he becomes subject to these rules shall be credited:—

- (i) If he be under the special leave rules—

- (1) the privilege leave which it would, on the date on which he becomes subject to these rules, be permissible to grant to him under the rules in force prior to that date: plus
- (2) one-eighth of the period spent on duty or on privilege leave prior to that date; plus
- (3) five-twenty-seconds of the period spent on duty subsequent to that date.

- (ii) If he be under the ordinary leave rules—

- (1) the privilege leave which it would, on the date on which he becomes subject to these rules, be permissible to grant to him under the rules in force prior to that date; plus
- (2) one-twelfth of the period spent on duty or on privilege leave prior to that date; plus
- (3) two-eleventh of the period spent on duty or subsequent to that date.

(c) An officer or servant of the Board who is subject at the time when these rules come into force, to the Indian Service Leave Rules which were in force under the authority of the Civil Service Regulations is entitled to credit to his leave account, in addition to period admissible under clause (b) above one-third of any period of leave on medical certificate taken under the former rules.

25. The amount of leave debited against an officer or servant's leave account is—

- (a) the actual period of leave on average pay, and
- (b) half the period of leave on half or quarter average pay.

*Note.—Under (b) above are to be debited—*

*Furlough, leave on medical certificate and special leave with allowance taken under either the European Service Leave Rules or the Indian Service Leave Rules as they stood before these rules came into force,*

26. When an officer or servant of the Board who has previously been subject to the ordinary leave rules, is admitted to the benefits of the special leave rules no change shall be made in the amount of leave previously credited and debited to his account, but he shall be entitled to the maximum amount of leave prescribed in rule 46 (a) (i).

27. The amount of leave due to an officer or servant of the Board is the balance of leave at his credit in the leave account.

28. Leave may be granted to an officer or servant of the Board at the discretion of the authority entitled to grant the leave, subject to the following restrictions:—

(a) the maximum amount of leave which may be granted expressed in terms of leave on average pay, is the privilege leave which it would be permissible to grant to the officer or servant in question, on the date on which he becomes subject to these rules, under the rules applicable to him prior to that date; plus one-eleventh of the period spent on duty subsequent to that date; plus

(i) in the case of an officer or servant under the special leave rules, three years; or

(ii) in the case of an officer or servant under the ordinary leave rules, two and a half years;

(b) The maximum amount of leave on average pay which may be granted is:—

(i) To an officer or servant under the special leave rules, eight months at any one time,

and in all, the privilege leave which it would, on the date on which he comes under these rules, be permissible to grant to him under the rules applicable to him prior to that date; plus

one-eleventh of the period spent on duty subsequent to that date; plus one year.

(ii) To an officer or servant under the ordinary leave rules, four months at any one time,

and in all, the privilege leave which it would, on the date on which he comes under these rules be permissible to grant to him under the rules in force prior to that date; plus

one-eleventh of period spent on duty subsequent to that date:

provided that, in the case of an officer or servant subject to the ordinary leave rules who either takes leave on medical certificate or spends his leave elsewhere than in India or Ceylon, the maxima prescribed in sub-clause (i) of this clause shall apply.

*Note.*—In the case of a servant or officer of the Board who is entitled under orders previously in force, to privilege leave for more than four months, the number of months to be taken at one time as prescribed in sub-clauses (i) and (ii) above may be increased, on the first occasion when leave is taken under these rules, by the number of months by which the amount of privilege leave due exceeds four months.



(c) Leave not due may be granted subject to the following conditions:—

- (i) on medical certificate, without limit of amount: and
  - (ii) otherwise than on medical certificate, for not more than three months at any one time and six months in all, reckoned in terms of leave on average pay.
- (d) The maximum period of continuous absence from duty on leave granted otherwise than on medical certificate is twenty-eight months.
- (e) When an officer or servant returns from leave which was not due and which was debited against his leave account, no leave will become due to him until the expiration of a fresh period spent on duty sufficient to earn a credit of leave equal to the period of leave which he took before it was due.

29. (a) On the conditions specified in clause (b) of this rule, a District Board may grant special disability leave to an officer or servant who is disabled by injury or illness—

- (i) in the performance of any particular duty which has the effect of increasing his liability to injury or illness beyond the ordinary risk attaching to the civil post which he holds; or
  - (ii) in, or in consequence of, the due performance of his official duties or in consequence of his official position.
- (b) The grant of special disability leave is subject to the following conditions:—
- (i) The disability must be certified by a medical officer to be directly due to the performance of the particular duties or to the holding of an official position.
  - (ii) The disability must ordinarily have manifested itself within three months of the performance of the duties or of the occurrence to which it is attributed, and the person disabled must have acted with due promptitude in bringing it to notice.
  - (iii) The period of leave granted shall be such as certified by a medical officer to be necessary and shall in no case exceed two years. If leave for less than two years is granted in the first instance, it shall not be extended except on the certificate of a medical officer.
  - (iv) Special disability leave may be combined with leave on average pay, if due, up to a maximum of four months of such leave, and with leave on half average pay if due and certified by a medical officer to be necessary.
- (c) Special disability leave may be granted if a disability contracted as in clause (a) of this rule is aggravated or reproduced in similar circumstances at a later date, but not more than two years of such leave shall be granted in consequence of any one disability.
- (d) The period of leave will not be debited against the leave account and will count as duty in calculating service for pension.

- (e) Leave salary on such leave will be equal to half average pay, subject to the maxima and minima prescribed in rules 85 & 86.

80. Leave may be granted to officers or servants, on such terms as the Local Government may by general or special order prescribe, to enable them to study scientific, technical or similar problem or to undergo special courses of instruction. Such leave is not debited against the leave account. (As corrected by the B. & O. Government, letter No. 7885-89 L. S. G., dated 31st October, 1924).

81. (a) In special circumstances and when no other leave is by rule admissible, extraordinary leave may be granted. Such leave is not debited against the leave account. No leave-salary is admissible during such leave.
- (b) The authority which has the power to sanction leave may grant extraordinary leave as in clause (a) in combination with, or in continuation of, any leave that is admissible, and may commute retrospectively period of absence without leave into extraordinary leave.

82. Leave granted to an officer or servant of the Board should in no case extend more than six months beyond the date on which the officer or servant must compulsorily retire, or, if the officer or servant is retained in service after that date, more than six months beyond the date on which he ceases to discharge his duties.

## SECTION V.

### LEAVE-SALARY.

83. Subject to the conditions in rules 28, 84, 85 and 86 an officer or servant of the Board on leave shall, during leave, draw leave-salary as follows:—

- (a) If the leave is due, leave-salary equal to average pay, or to half average pay, or to average pay during a portion of the leave and half average pay during the remainder, as he may elect; and
- (b) if the leave is not due, leave-salary equal to half average pay.

*Note—When an officer or servant of the Board takes leave, his pay at the time of taking leave may be treated as his average pay for the purpose of this rule, if—*

- (i) his pay is less than Rs. 300, or
- (ii) the leave taken does not exceed one month.

84. After continuous absence from duty on leave for a period of 28 months, an officer or servant of the Board will draw leave-salary equal to quarter average pay, subject to the maxima and minima prescribed in rules 85 and 86.

85. Except during the first four months of any period of leave on average pay, leave-salary is subject to the monthly maxima shown in the following table:—

—	Average	Half Average	Quarter Average
1	2	3	4
	Rs.	Rs.	Rs.
Officers or servants of the Board subject to the special leave rules.	2,000	1,000	600
Officers or servants subject to the ordinary leave rules.	1,500	750	600

86. Subject to the condition that the leave-salary of an officer or servant of the Board shall in no case exceed his average pay, leave-salary is subject to the monthly minima shown in the following table :—

—	Half Average	Quarter Average
1	2	3
	Rs.	Rs.
If subject to the special leave rules	888	166
If subject to the ordinary leave rules	250	125

*Note:—The minima specified above apply when leave is taken or extended out of India (Vide B. & O. Government, letter No. 6412—16, L. S. G., dated 20th June, 1923.)*

#### CHAPTER IV.

##### MISCELLANEOUS.

37. After five years' continuous absence from duty, whether with or without leave, a servant of the District Board ceases to be in the employ of the District Board.

38. The following provisions apply to teachers of the Board's schools who are allowed regular vacations :—

- (a) Vacation count as duty, but the periods of the total leave in rules 24, 28 (a) and 28 (b) should ordinarily be reduced by one month for each year of duty in which the servant of the Board has availed himself of the vacation. If a part only of the vacation has been taken in any year, the period to be deducted will be a fraction of a month equal to the proportion which the part of the vacation taken bears to the full period of the vacation.
- (b) In the cases of urgent necessity, when a servant of the board requires leave and no leave is due to him, the periods in rules 24 and 28 (a), as reduced by clause (a) of this rule, may be increased by one month for every two years of duty.

## MODEL LEAVE RULES

- (c) When a servant of the Board combines vacation with leave, the period of vacation shall be reckoned as leave in calculating the maximum amount of leave on average pay which may be included in the particular period of leave.

39. Leave may be granted to any other servant of the Board without a lien on a permanent post while officiating in a post or holding a temporary post, provided that the grant of the leave involves no expense to the District Board. On this condition such a servant of the Board may be granted —

- (a) leave or leave-salary equivalent to full pay up to one-eleventh of the period spent on duty, subject to a maximum of four months at a time, or
- (b) on medical certificate, leave or leave-salary equivalent to half pay for three months at any one time, or
- (c) extraordinary leave for three months at any one time.

40. A compensatory allowance should ordinarily be drawn only by a servant of the Board actually on duty but a servant of the Board on leave on average pay may continue to draw a compensatory allowance, or a portion thereof in addition to leave-salary during the first four months of his leave on the condition that the whole or a considerable part of the expense to meet which the allowance was given continues during leave.

### FORM A.

#### FORM OF MEDICAL CERTIFICATE OF FITNESS.

(Rule 19).

I, A.B., do hereby certify that I have examined C.D., of the office of \_\_\_\_\_ and that I consider him fit to resume his duties in the service of the District Board.

### FORM B.

(See the facing page for the Form B.)

#### INSTRUCTIONS.

(1) The account is to be maintained in terms of leave on average pay

(2) In the case of a servant of the District Board already in service of the Board the first entries, i.e., the entries that will be made from the date on which the servant of the Board concerned elects to come under the new rules, will be in columns 3, 4 and 5, the entries to be made in accordance with rules 24 and 25.

(3) When a servant of the Board applies for leave, columns 1 to 3 are to be filled up for arriving at the leave at his credit. The period of leave shown in column (3) should be arrived at by adding the new entry in column (2) to the last previous entry in column (3).

(4) When a servant of the Board returns from leave, columns 4, 5 and 6 will be filled up. The portion of the leave on half or quarter average pay will be entered in column 5 (a) and this period divided by 2 is the entry to be made in column 5 (b).

(5) The maximum prescribed in Rule 28 (a) will be applied to the totals or the periods in column (6), while the maximum in Rule 28 (b) should be applied to the totals of the periods in column 4.

(6) If a servant of the Board passes from under the ordinary to the special leave rules a new leave account must be opened.

**(Rule 28).**

**Leave account of—**

Duty.	Leave earned	Leave at credit (2+7)	Leave taken												Balance (3-6)	Signature of attending officer.																																																																																																																																																																																																																																																																																																																									
			On average pay						On half or quarter average pay.																																																																																																																																																																																																																																																																																																																																
			From		To		y m d		From		To		y m d				Period converted to leave on average pay (b)		Total 4+5 (b)																																																																																																																																																																																																																																																																																																																						
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100	101	102	103	104	105	106	107	108	109	110	111	112	113	114	115	116	117	118	119	120	121	122	123	124	125	126	127	128	129	130	131	132	133	134	135	136	137	138	139	140	141	142	143	144	145	146	147	148	149	150	151	152	153	154	155	156	157	158	159	160	161	162	163	164	165	166	167	168	169	170	171	172	173	174	175	176	177	178	179	180	181	182	183	184	185	186	187	188	189	190	191	192	193	194	195	196	197	198	199	200	201	202	203	204	205	206	207	208	209	210	211	212	213	214	215	216	217	218	219	220	221	222	223	224	225	226	227	228	229	230	231	232	233	234	235	236	237	238	239	240	241	242	243	244	245	246	247	248	249	250	251	252	253	254	255	256	257	258	259	260	261	262	263	264	265	266	267	268	269	270	271	272	273	274	275	276	277	278	279	280	281	282	283	284	285	286	287	288	289	290	291	292	293	294	295	296	297	298	299	300	301	302	303	304	305	306	307	308	309	310	311	312	313	314	315	316	317	318	319	320	321	322	323	324	325	326	327	328	329	330

# STATEMENT SHOWING THE CONSTITUTION OF THE MUNICIPALITIES IN BIHAR AND ORISSA.

Name of Division and District	Serial number of municipality	Name of municipality	Act under which constituted	Particulars as to Chairman		Number of Commissioners elected by rate payers	Number of Commissioners nominated by Government		Total number of Commissioners fixed by Government	Wards into which the municipality is divided	Remarks	
				Elected non-official	Elected official		Ex-officio	Nominated				
1	2	3	4	5	6	7	8	9	10	11	12	
Patna Division	{ 1 2 3 4 5 6	Patna City	B & O Act VII of 1922 Patna Administration Act I of 1915	1		32	4	4	40	9		
		Barh		1		8	2	2	10	9		
		Bihar		1		16	3	3	20	8		
		Dinapur		1		16	3	1	20	5		
		Khagaul		1		9	2	1	11	7		
		Patna Administration Committee										
Gaya	{ 7 8 9	Gaya	B & O Act VII of 1922	1		21	4	1	26	10		
		Tikari		1		11	2	2	15	7		
		Daudnagar				12	1	2	15	6		
		Arrah		1		24	3	3	30	10		
		Jagadispur		1		8	2	2	10	5		
		Buxar		1		8	2	1	10	3		
Sahabad	{ 10 11 12 13 14 15	Dumraon	"	1		8	1	1	10	2		
		Bhabhua		1		8	2	2	10	6		
		Sasaram		1		20	3	2	25	6		
Tirhut Division	{ 16 17 18	Chapra	"	1		20	2	3	25	4		
		Revelganj		1		8	2	2	10	10		
		Sewan		1		8	2	2	10	10		
Saran	{ 19 20	Mothihari	"	1		16	3	1	20	7		
		Bettiah		1		16	2	2	20	20		

# STATEMENT SHOWING THE CONSTITUTION OF THE MUNICIPALITIES IN BIHAR AND ORISSA.

Name of Division and District.	Serial No. of Municipality.	Name of Municipality.	Act under which constituted.	Particulars as to Chairman		Number of Commissioners elected by rate payers	Number of Commissioners nominated by Government.		Total Number of Commissioners fixed by Government.	Wards into which the Municipality is divided.	REMARKS.
				Elected non-official	Elected official		Ex-officio.	Nominated.			
1	2	3	4	5	6	7	8	9	10	11	12
Muzaffarpur	21	Muzaffarpur	B & O	1		24	3	3	30	12	
	22	Hazipur	Act	1		12	2	1	15	6	
	23	Lalganj	VII of 1922	1		8	2	...	10	4	
	24	Sitamarhi		1		12	2	1	15	4	
	25	Darbhanga		1		24	2	4	30	7	
Darbhanga	26	Madhubani	"	1		12	2	1	15	5	
	27	Roserah	"	1		12	2	1	15	7	
	28	Samastipur	"	1		12	2	1	15	8	
Bhagalpur Division											
Monghyr	29	Monghyr	"	1		20	2	3	25	12	
	30	Jamalpur	"	1		16	3	1	20	6	
Bhagalpur	31	Bhagalpur	"	1		20	3	2	25	9	
	32	Colong	"	1		8	1	1	10	6	
	33	Purnea	"	1		20	2	3	25	6	
Purnea	34	Kishanganj	"	1		12	2	1	15	4	
	35	Katihar	"	1		8	2	...	10	4	
	36	Forbesganj	"	1		5	1	4	10	3	
	37	Deoghhar	"	1		12	2	1	15	...	
Santal Parganas	38	Sahibganj	"	...		8	2	...	10	6	
	39	Dumka	"	1		12	2	1	15	8	
	40	Madhupur	"	1		9	1	2	12	...	
Orissa Division											
Cuttack	41	Cuttack	"	1		22	3	5	30	12	
	42	Jaypur	"	1		11	2	2	15	6	
Balasore Puri	43	Kendrapara	"	1		8	...	2	10	8	
	44	Balasore	"	1		16	3	1	20	6	
Shambalpur	45	Puri	"	1		16	3	1	20	...	
	46	Sambalpur	"	1		16	2	2	20	...	

**STATEMENT SHOWING THE CONSTITUTION OF THE MUNICIPALITIES IN BIHAR AND ORISSA.**

Name of Division and District	Serial number of Municipality	Name of Municipality	Act under which constituted	Particulars as to Chairman		Number of Commissioners elected by rate-payers	Number of Commissioners nominated by Government		Total number of Commissioners fixed by Government	Wards into which the Municipality is divided	Remarks
				Elected non-official	Elected official						
1	2	3	4	5	6	7	8	9	10	11	12
Chote Nagpur Division											
Hazaribagh	{ 47 48 49 }	Hazaribagh Chatra Giridih	B & O Act VII of 1922	1 1 1		16 12 16	3 2 3	1 1 1	20 15 20	10 5 6	
Ranchi	{ 50 51 }	Ranchi Lohardaga	"	1 1		20 8	... 2	5 ...	25 10	7 4	
Palamu	52	Daltonganj	"	1		12	...	3	15	6	
Manbhum	{ 53 54 55 56 }	Purnia Jhanda Raghunathpur Dhanbad	"	1 1 1 1		16 8 12 16	3 2 3 3	1 ... ... 1	20 10 15 20	4 ... ... 6	
Singbhum	{ 57 58 }	Chaibassa Chakradharpur	"	1 1		12 8	3 2	... ...	15 10	6 5	



***APPENDIX***

**PART II**

**OTHER LAWS AND RULES.**



# THE BENGAL VACCINATION ACT.

Being

ACT NO. V OF 1880.

PASSED BY THE LIEUTENANT-GOVERNOR OF BENGAL IN COUNCIL.

*(Received the assent of the Lieutenant-Governor on the 12th April, 1880,  
and of the Governor-General on the 17th May, 1880.)*

## AN ACT TO MAKE VACCINATION COMPULSORY.

[This Act has been amended by Bengal Acts II of 1887, II of 1890 and Act II of 1911. The former of these Acts has been amended by India Council Act V of 1897. Their provisions are incorporated herein and in the notes.]

**Preamble.** Whereas it is expedient to make vaccination compulsory in the Town of Calcutta, "and the Port of Calcutta" and in other towns and selected local areas in the territories administered by the Lieutenant-Governor of Bengal to which this Act may be hereafter extended: It is hereby enacted as follows:—

### PRELIMINARY.

**Short title.** 1. This Act may be called The Bengal Vaccination Act, 1880;"

**Extent.** It applies in the first instance only to the Town of Calcutta; "and the Port of Calcutta" as hereinafter defined;

**Power to extend Act to towns and local area.** But the Lieutenant-Governor may, by notification published in the Calcutta Gazette, declare his intention to extend this Act, or any of its provisions, to any town or selected local area in the territories administered by him.

**Objection to such extension.** Any inhabitant of such town or area objecting to such extension may, within six weeks from the said publication, send his objection in writing to the Secretary to the Government of Bengal, and the Lieutenant-Governor shall take such objection into consideration.

**Procedure thereon.** When six weeks from the said publication have expired, the Lieutenant-Governor, if no such objections have been sent as aforesaid, or (where such objections have been so sent in) if in his opinion they are insufficient, may by like notification effect the proposed extension.

The Lieutenant-Governor shall cause the substance of any notification mentioned in this section to be proclaimed and notified within the town or area affected by the same, in the vernacular of such town or area, by such means, and in such manner, as he may direct.

**Commencement.** This Act shall come into force from the day on which it may be published in the Calcutta Gazette with the assent of the Governor-General; but its operation in any place may at any time be suspended by the Lieutenant-Governor by notification in the said Gazette.

### NOTES.

When a Bengal Act applies to the province of Bihar and Orissa the reference to the "Calcutta Gazette" in it will be taken as referring to the "Bihar and Orissa Gazette" and the reference to "Lieutenant-Governor" will be taken to refer to the "Governor-General in Council, Bihar and Orissa." See sec. 8 and Sch. D of the Bengal, Bihar and Orissa and Assam Laws Act. (Act VII of 1912, I. C.)

#### Interpretation clause.

2. In this Act—unless there be something repugnant in the subject or context—

#### "Town of Calcutta."

"Town of Calcutta" means Calcutta as defined by the Calcutta Municipal Consolidation Act, 1888:

#### "Port of Calcutta."

"Port of Calcutta" means the Port of Calcutta subject to the jurisdiction of the Commissioners appointed under Bengal Act V of 1870, or any other law for the time being in force:

#### "Parent."

"Parent" includes the father and mother of a legitimate child, and the mother of an illegitimate child:

#### "Guardian."

"Guardian" means any person to whom the care, nurture, or custody of any child falls by law, or by natural right or recognised usage or who has accepted or assumed the care, nurture, or custody of any child, or to whom the care or custody of any child has been entrusted by any authority lawfully authorized in that behalf:

#### "Public vaccinator."

"Public vaccinator" means any vaccinator appointed under this Act or any person duly authorized to act for such public vaccinator:

### NOTES.

A vaccinator is a public servant within the meaning of section 21 (8) of the Penal Code. H. C. Proceedings No. 944, dated 10th May, 1881. See 1 Weir, p. 27.

"Vaccinators employed under Municipalities should be treated as Municipal servants so far as pay, pension, and leave are concerned. They are under the administrative control of the District Magistrate (S. 25). Municipalities should not appoint, grant leave to, or punish a vaccinator without a reference to the District Magistrate who will consult the Civil Surgeon before passing orders. See Govt. Cir., No. 20, dated the 8th October, 1907." Collier's Municipal Manual, p. 780.

"Inspector" means a person authorized by the Superintendent of Vaccination to exercise all or any of the functions of an Inspector under this Act.

### NOTES.

The definition of "Inspector" was inserted by Bengal Act II of 1911.

#### "Medical practitioner"

"Medical practitioner" means any person duly qualified by a diploma, degree, or license, to practise in medicine or surgery.

NOTES.

The definition has been amended by Bengal Act II of 1911.

"Unprotected child." "Unprotected child" means a child who has not been protected from small-pox by having had that disease naturally or by having been successfully vaccinated, and who has not been certified under the provisions of this Act to be insusceptible of vaccination.

"Unprotected person." "Unprotected person" includes a child who has no parent or guardian, and means a person who has not been protected from small-pox by having had that disease naturally or by having been successfully vaccinated, and who has not been certified under the provisions of this Act to be insusceptible of vaccination.

"Section," "Section" means a section of this Act.

"Vessel." "Vessel" includes anything made for the conveyance by water of human beings or of property.

NOTES.

This definition has been inserted by Bengal Act II of 1911.

VACCINATION OF CHILDREN.

3. The parent or guardian of every child born in any place to which this Act applies as above provided, or may hereafter be extended, shall within six months after the birth of such child; and the parent and guardian of every unprotected child under the age of fourteen years brought to reside, whether temporarily, or permanently, in such a place as aforesaid shall, within six months after such child's arrival in such place, take it, or cause it to be taken, to a public vaccine station to be vaccinated, or shall within such period as aforesaid cause it to be vaccinated by some medical practitioner or public vaccinator,

Unprotected child may be required to be vaccinated within 15 days. and the parent or guardian of every unprotected child may whenever the Superintendent of Vaccination as hereinafter appointed, shall deem it expedient, be served with a notice in the form prescribed in the first Schedule of this Act, requiring the parent or guardian, within fifteen days after the service of the same, to take such child, or cause such child to be taken, to a public vaccine station to be vaccinated, or within such period as aforesaid to cause it to be vaccinated by some medical practitioner or public vaccinator, and every such parent or guardian shall within the said period comply with the requisition,

Public vaccinator bound to vaccinate all children brought to him. and any public vaccinator to whom such child, or to whom any child under the age of fourteen years, is brought for vaccination at such vaccine station, or who is requested to vaccinate such child elsewhere than at a public vaccine station, is hereby required, with all reasonable despatch, subject to the conditions hereinafter mentioned, to vaccinate such child.

inspection.

4. At an appointed hour on a day not less than seven or more than ten days after the operation shall have been performed, or on an earlier day, if required, the parent or guardian shall cause the child to be inspected by the operator (if a medical practitioner) or by an Inspector, that the result of the operation may be ascertained; and, when any public vaccinator has vaccinated a child elsewhere than at a public vaccine station an Inspector shall visit the child at the time and for the purpose above mentioned, whether he is requested to do so or not.

Repetition of vaccination. In the event of the vaccination being unsuccessful, such parent or guardian shall, if the Inspector or medical practitioner so direct, cause the child to be forthwith again vaccinated, and subsequently inspected as on the previous occasion.

No fee shall be charged by an Inspector for anything done by him under this section.

5. If any Inspector or medical practitioner shall be of opinion that any child is not in a fit state to be vaccinated, he shall forthwith deliver to the parent or guardian of such child a certificate under his hand according to the form of Schedule (A) hereto annexed, or to the like effect, that the child is then in a state unfit for vaccination.

Which shall remain in force for one month, but shall be renewable.

The said certificate shall remain in force for one month only, but shall be renewable for successive periods of one month until an Inspector or medical practitioner shall deem the child to be in a fit state for vaccination, when the child shall, with all reasonable despatch, be vaccinated and a certificate of successful vaccination given in the form of Schedule (C) hereto annexed, according to the provisions of section seven, if warranted by the result.

Procedure when child is found to have had small pox or to be insusceptible of successful vaccination.

6. (1) If any Inspector or medical practitioner finds—
  - (a) that a child brought for vaccination has already had small-pox, or
  - (b) that a child who has been three times unsuccessfully vaccinated in insusceptible of successful vaccination,

he shall deliver to the parent or guardian of such child a certificate under his hand, according to the form in Schedule (B) hereto annexed to the like effect.

(2) If the Superintendent is satisfied that such child has already had small-pox, or is insusceptible of successful vaccination, he shall endorse such certificate.

(3) Such endorsement shall operate as an exemption from liability to vaccination,—

(i) in case (a) in sub-section (1)—absolutely, and

(ii) in case (b) in that sub-section—for a period of twelve months.

(4) Upon the expiration of the said period, the parent or guardian of such child shall forthwith cause the child to be vaccinated again;

and, if an Inspector or a medical practitioner finds after two further unsuccessful vaccinations that the child is insusceptible of successful vaccination, he shall deliver to the parent or guardian a further certificate under his hand, according to the form of Schedule (B) hereto annexed, or to the like effect;

and, if the Superintendent of Vaccination be again satisfied that the child is insusceptible of successful vaccination, he shall endorse such certificate, and such endorsement shall operate as an absolute exemption from liability to further vaccination.

### NOTES.

This section has been substituted by Bengal Act II of 1911.

Provision for giving certificates of successful vaccination.

Inspector or practitioner, as the cases may be, shall deliver to the parent or guardian of such child a certificate according to the form of Schedule (C) hereto annexed, or to the like effect, certifying that the said child has been successfully vaccinated.

No fee to be charged for vaccination at a public vaccine station or for certificates.

ance of this Act at a public vaccine station:

Proviso.

But when a public vaccinator attends at the request of the parent or guardian elsewhere than at a public vaccine station for the purpose of vaccinating a child, he shall be paid a fee not exceeding eight annas, such fee to be devoted to the purposes in the next succeeding section mentioned.

Fees how to be appropriated,

9. All such fees shall, in Calcutta, be paid in by the public vaccinator to the credit of the Corporation of the Town of Calcutta, and be by them appropriated for the purposes of this Act. In places outside Calcutta such fees shall be appropriated as the Lieutenant-Governor may from time to time direct.

Superintendent of Vaccination or his assistants may inspect vaccination of child.

10. The Superintendent of Vaccination as hereinafter appointed or any of his assistants or any Inspector may from time to time inspect the vaccination of any child, whether performed by a public vaccinator or medical practitioner, and may, if he think fit, direct that such child be forthwith again vaccinated.

### VACCINATION OF UNPROTECTED PERSONS.

Unprotected person to be vaccinated.

11. Every unprotected person may, whenever the said Superintendent of Vaccination shall deem it advisable, be served with a notice in the form in Schedule (D) hereto annexed, requiring him within fifteen days after the service of the same to submit himself to a public vaccinator or medical practitioner to be

vaccinated, and every such person shall within the said period submit himself to a public vaccinator or medical practitioner for vaccination.

Former sections applicable.

12. The provisions of sections three to ten (both inclusive) shall apply with the necessary alterations to the case of unprotected persons.

Health officer of Port may cause vaccination of unprotected persons on their arrival.

13. The powers conferred by sections eleven and thirty upon the said Superintendent of Vaccination may in the case of unprotected persons arriving in the Port of Calcutta be exercised by the Health Officer of the said Port immediately upon their arrival.

Health officer may, in certain cases, require immediate vaccination of unprotected person on board.

If a vessel arrives in the said Port of Calcutta having on board any person suffering from the disease of small-pox, the said Health Officer may, if he deem it expedient in order to prevent the risk of the contagion of small-pox being conveyed into the Town or Suburbs of Calcutta, require any unprotected person on board such vessel to submit himself forthwith to be vaccinated, and every such person shall before leaving the vessel submit himself to the said Health Officer, or any person duly authorized to act in this behalf, for vaccination:

Provided that nothing herein contained shall apply to any vessel belonging to, or in the service of, Her Majesty or the Government of India, or to any vessel belonging to any foreign Prince or State.

Proviso.

#### MISCELLANEOUS.

Occupier of house, &c, to allow access.

18A. Every person occupying any house, enclosure, vessel, or other place within the limits of the Town or Port of Calcutta, or the Suburbs of Calcutta, or the Town of Howrah, shall allow the Superintendent of Vaccination, or a medical practitioner or public vaccinator or Inspector duly authorized by him in this behalf, such access thereto as he may require for the purpose of ascertaining whether the inmates are protected or not, and as, having regard to the customs of the country, may be reasonable.

Whenever it is necessary to ascertain whether a woman is protected or not, the investigation shall be conducted by a female with strict regard to the habits and customs of the country.

#### PROCEDURE APPLICABLE TO THE TOWN OF CALCUTTA ONLY.

(Secs. 14 to 24 relate to the public vaccine stations and appointment of Public Vaccinators and Inspectors and Registration of Births and Deaths in the town of Calcutta and they have no application in the mofussil, so they are omitted.)

#### PROCEDURE APPLICABLE OUTSIDE THE TOWN OF CALCUTTA.

Powers of corporation may be exercised in mofussil by Magistrate of the District;

25. In any municipality other than the Town of Calcutta, and in any local area to which this Act may hereafter be extended, the Magistrate of the district may exercise all or any of the powers by this Act, conferred upon the Corporation;



and the Civil Surgeon of the district or such other officer as the Lieutenant-Governor may from time to time appoint in that behalf shall exercise the powers and perform the duties by this Act assigned to the Superintendent of Vaccination.

The following sections of the Bengal Local Self-Government Act (Act III of 1885) form a part of the Bengal Vaccination Act *vide* Sec. 96 of the Act quoted below.

#### F.—VACCINATION.

District board to have supervision of vaccinations within their districts.

92. Every District Board shall, within its district, be charged with the appointment, payment, management, and supervision of all public vaccinators.

District board to appoint Inspectors of Vaccination.

93. Every District Board shall appoint a properly qualified person to be Inspector of Vaccination within its district, and shall, subject to the provisions of section 83, fix the salary to be paid to such person.

Every Inspector of Vaccination appointed under this section shall, within its district, exercise the powers, and perform the duties, assigned to the Superintendent of Vaccination under the Bengal Vaccination Act, 1880.

District board to have powers of Magistrate in district to which the Vaccination Act extends.

94. In every district to which the Bengal Vaccination Act, 1880, has been, or may hereafter be extended, the District Board shall have the powers of the Magistrate of the District under section 25 of the said Act.

Commissioner to make rules for guidance of district boards.

95. The Commissioner may, with the sanction of the Lieutenant-Governor, make rules consistent with this Act, and with the Bengal Vaccination Act, 1880, for the guidance of every District Board in the exercise of the powers conferred under the three last preceding

sections, and may, from time to time, with the like sanction, repeal or alter such rules.

Act to be read with the Bengal Vaccination Act.

96. The four last preceding sections, so far as is consistent with the tenor thereof, shall be read with, and form a part of, the Bengal Vaccination Act, 1880.

#### PROSECUTIONS AND OFFENCES.

Magistrate may make an order for the vaccination of any unprotected child under 14 years.

26. If the Superintendent of Vaccination shall notify in writing to a Magistrate that he has reason to believe from the statement of an informant or otherwise that any child under the age of fourteen years is an unprotected child, and that he has given notice to the parent or guardian of such child to procure its being vaccinated, and that the said notice has been disregarded, such Magistrate may summon such parent or guardian to appear with the child before him; and if the Magistrate shall find, after such enquiry as he shall deem necessary, that the child is an unprotected child, he may, whether the child has been produced or not, make an order directing such child to be vaccinated within a certain time. If the child is at any time produced before him the Magistrate may unless the child is certified under section five to be in a state unfit for vaccination, order it to be vaccinated forthwith in his presence, and in

that case may punish such parent or guardian for any recusancy under this clause with fine which shall not exceed five rupees.

Penalty for disobedience of such order.

If at the expiration of the time appointed by the Magistrate the child shall not have been vaccinated, or shall not be shown to be then unfit to be vaccinated or to be insusceptible of vaccination, the person upon whom such order shall have been made shall, unless he can show some reasonable ground for his omission to carry the order into effect, be punished with fine which may extend to fifty rupees;

Proviso for cost to persons improperly summoned.

Provided that, if the Magistrate shall be of opinion that the person is improperly brought before him, and shall refuse to make an order for the vaccination of the child, he may direct the said Superintendent to disclose the name of his informant, if any, and may order such informant to pay to such person such sum of money as the Magistrate shall consider a fair compensation for expenses and loss of time in attending before him;

Provided also that nothing in this section shall be held to compel the production before a Magistrate of any female child above the age of eight years.

Penalty for not producing a child.

27. If any parent or guardian intentionally omits to produce a child whom he has been summoned to produce under the last preceding section, he shall be liable to fine which may extend to one hundred rupees and to a further fine of twenty-five rupees for every day during which the offence continues.

Provided that the aggregate amount of fine for such offence shall not exceed one thousand rupees.

Penalty for neglect to be vaccinated.

28. Whoever in contravention of this Act (a) neglects without reasonable excuse to submit himself within fifteen days after the service on him of the notice prescribed by section eleven to a public vaccinator or medical practitioner to be vaccinated or to the operator (if a medical practitioner) or to an Inspector after vaccination to be inspected, or

Penalty for neglect to take child to be vaccinated, etc.

(b) neglects without reasonable excuse to take, or cause a child to be taken to be vaccinated, or after vaccination to be inspected, or

(c) neglects to fill up and sign and give to any person or to the parent or guardian of any child any certificate which such person, parent or guardian is entitled to receive from him, or to transmit a duplicate of the same to the Registrar of Births or

(d) refuses without reasonable excuse to submit himself to be vaccinated when required so to do by the Health Officer exercising the powers conferred upon him by section thirteen,

shall be punished for each such offence with fine which may extend to fifty rupees.

No prosecution under this section shall be instituted after the expiry of twelve months from the date on which the offence has been committed.

Penalty for making or signing false certificate.

29. Whoever wilfully signs or makes, or procures the signing or making of, a false certificate or duplicate certificate under this Act, shall be punished with imprisonment of either description, within the meaning of

the Indian Penal Code, for a term which may extend to six months, or with fine which may extend to one hundred rupees, or with both.

Penalty for obstructing public vaccinator in the discharge of his duties.

29A. Whoever voluntarily obstructs any public vaccinator or Inspector in the discharge of the duties assigned to him as such shall be punished for each such offence with fine which may extend to fifty rupees.

Veraxations entry by public vaccinator.

29B. Any public vaccinator who vexatiously and unnecessarily enters any house, enclosure, vessel, or other place, on pretence of ascertaining whether the inmates, or any of them, are protected or not, shall, for every such offence, be punished with fine which may extend to fifty rupees.

Prosecutions to be instituted by Lieutenant Governor or Superintendent of Vaccination.

30. All offences under this Act shall be cognisable by a Magistrate, subject to the provisions of any law for the time being in force for the trial of offences; but no complaint of any such offences shall be entertained unless the prosecution be instituted by order of, or under authority from, the Lieutenant-Governor or the Superintendent of Vaccination.

Prosecution for negligence.

31. In any prosecution for neglect to procure the vaccination of a child, it shall not be necessary in support thereof to prove that the defendant had received notice from the Registrar or any other officer of the requirements of the law in this respect; but if the defendant produce any such certificate as hereinbefore described, or the duplicate of the Register of Births or the Register of Postponed Vaccination kept by the Registrar as hereinbefore provided, in which such certificate shall be duly entered, the same shall be a sufficient defence for him, except in regard to the certificate according to the form of the said Schedule (A), when the time specified therein for the postponement of the vaccination shall have expired before the time when the information shall have been laid.

#### MISCELLANEOUS.

Annual return to be made of the number of children vaccinated. etc.

82. It shall be the duty of the Superintendent of Vaccination to show in an Annual Return the number of children successfully vaccinated, the number whose vaccination has been postponed and the number certified to be insusceptible of successful vaccination during the year; and generally to fill up any forms that may be prescribed from time to time by the Lieutenant-Governor or the Corporation.

Lieutenant governor or to make rules.

85. The Lieutenant-Governor may from time to time make rules or issue orders consistent with this Act—

- (a) determining the qualifications to be required of public vaccinators;
- (b) regulating the scale of fees to be paid outside the Town of Calcutta;
- (c) regulating the gratuitous vaccination of such females as are by the custom of the country unable to attend at the public vaccine stations, and are too poor to pay fees;
- (d) providing for the supply of lymph;

(e) regulating the books and forms to be kept by the Public Vaccinators or by Registrars, and also such forms as shall be required for the signature of medical practitioners under the provisions of this Act; and generally

(f) for the guidance of public vaccinators and others in all matters connected with the working of this Act.

All such rules or orders shall be published in the Calcutta Gazette.

## FIRST SCHEDULE.

(See Section 8.)

To

*(Here insert the name of the parent or guardian).*

Take notice that you are hereby required, under the provisions of the Bengal Vaccination Act, 1880, to take, or cause *(here insert the name of the child)* the child of *(here insert the name of the father)* to be taken to a public vaccine station for vaccination, or to cause it to be vaccinated by some medical practitioner or public vaccinator within fifteen days from the service of this notice, and that in default of so doing you will be liable to a fine of fifty rupees.

The public vaccine station nearest your house is at

The days and hours for vaccination at that station are as follows:—

*(Here insert the days and hours when the public vaccinator is in attendance).*

On the said *(here insert the name of the child)* being brought before a public vaccinator at the said station within the said hours on any of the said days, or at any other public vaccine station in the town on the days and within the hours prescribed for public vaccination at such station, the said *(here insert the name of the child)* will be vaccinated free of charge.

If you wish the said *(here insert the name of the child)* to be vaccinated at your own house, the public vaccinator will attend there upon payment of a fee of

Dated the                      of                      19 .

*Superintendent of Vaccination or Civil Surgeon as the case may be.*

## SCHEDULE A.

(See section 5)

I, the undersigned, hereby certify that in my opinion                      the child of                      , resident at                      , is not now in a fit and proper state to be vaccinated, and I do hereby recommend that the vaccination be postponed for the period of three months from this date.  
Dated this                      day of                      19 .

*(Signature of Medical Practitioner or Inspector).*

SCHEDULE B.

(See Section 6).

I, the undersigned, hereby certify that the child of  
residing at \_\_\_\_\_ has already had small pox (or as the case may be),  
that I have (or a public vaccinator has) three times (or twice as the case  
may be) unsuccessfully vaccinated \_\_\_\_\_, the child of  
residing at \_\_\_\_\_, and I am of opinion that the said child is  
insusceptible of successful vaccination.  
Dated this \_\_\_\_\_ day of \_\_\_\_\_ 19 .

(Signature of Medical Practitioner or Public Vaccinator).

(Endorsement by Superintendent of Vaccination).

SCHEDULE C.

(See Section 7).

I, the undersigned, hereby certify that \_\_\_\_\_, the child of  
age \_\_\_\_\_, resident at \_\_\_\_\_, has been successfully vaccinated by me.  
Dated this day of \_\_\_\_\_ 19 .

(Signature of Medical Practitioner or Inspector).

SCHEDULE D.

(See Section 11).

To

Take notice that you are hereby required under the provisions of the Bengal Vaccination Act, 1880, to submit yourself to a public vaccinator or medical practitioner within fifteen days from the service of this notice for vaccination, and that in default of so doing you will be liable to a fine which may amount to fifty rupees.

The public vaccine station nearest your house is at

The days and hours for vaccination at the station are as follows:—

*(Here insert the days and hours when the public vaccinator is in attendance).*

On your attending before a public vaccinator at the said station within the said hours on any of the said days, or at any other public vaccine station in the town on the said days and within the hours prescribed for public vaccination at such station, you will be vaccinated free of charge.

If you wish to be vaccinated at your own house, the public vaccinator will attend there upon payment of a fee of

Dated the \_\_\_\_\_ of \_\_\_\_\_ 19 .

*Superintendent of Vaccination or Civil Surgeon, as the case may be.*

## SCHEDULE E.

(See Section 18).

To

*(Here insert the name of the parent, guardian, or other person who gives information of the child's birth).*

Take notice that the child of *(here enter the mother's name)* whose birth has this day been registered, must be vaccinated under the provisions of the Bengal Vaccination Act, 1880, within one year from the date of its birth, under penalty.

The public vaccine station nearest to the house in which the child was born is at No.      The days and hours for vaccination at that station are as follows:—

*(Here insert the days and hours when the public vaccinator is in attendance).*

On your taking, or causing the child to be taken, to the public vaccinator at the said station within the said hours on any of the said days, or at any other public vaccine station in the city on the days and within the hours prescribed for public vaccination at such station, it will be vaccinated free of charge.

If you wish to have the child vaccinated at your own house, the public vaccinator will attend there upon payment of a fee of

You should be careful to have one of the annexed forms of certificates filled in by an Inspector, or if you employ a private medical practitioner to vaccinate the child, by such medical practitioner, and to keep the same in your possession. Any such certificate will be granted to you by a public vaccinator free of charge.

Dated the      of      19 .

*Registrar of Births.*

## SCHEDULE F.

(See Section 22).

Register of Postponed Vaccinations for the district of

Consecutive number	Name of Child.	Birth		Date of certificate of postponement	Signature of Registrar
		year	Number of entry in register.		
1	Ram Chandra Dass	1878	12	May 1878 10	H.O.

**RULES UNDER THE BENGAL VACCINATION ACT ISSUED UNDER  
NOTE NO: 968 SAN. OF 28TH MARCH, 1912, AND EXTENDED TO  
THE WHOLE OF BENGAL EXCEPT CALCUTTA UNDER  
NO. 1690 SAN. OF 26TH JULY, 1912.**

- 1. In these rules, " the Act " means the Bengal Vaccination Act, 1880.**

(a) **Qualification of Public Vaccinators.**

2. (i) No person shall be recognised as a public vaccinator, who does not possess a certificate of competency granted by a Superintendent of a Medical School, a Civil Surgeon, or other Principal Civil Medical Officer of a district, or by a Military Medical Officer of a cantonment, after oral and practical examination of the candidate.

- (ii) Such certificate shall be in the following form :—

I hereby certify that I have examined.....in the manner contemplated by Rules 1 (i) and 4 of the Rules under the Bengal Vaccination Act, 1880, and that I find him qualified for the office of public vaccinator.

Superintendent of Medical School,  
or Civil Surgeon  
or Principal Civil Medical Officer  
of the district of or  
Principal Military Medical Officer of Cantonment.  
Dated

3. Every person who desires to present himself for the above examination shall, if he has not attended a vaccination class at one of the Medical Schools in India and attained a certificate of competency from the Superintendent thereof, submit evidence, to the satisfaction of the certifying authority referred to in rule 2 (i), prior to his examination, that he has been engaged in vaccination work, in the capacity of an apprentice or assistant, for a period of at least six months.

4. Every candidate for the post of public vaccinator shall be required to satisfy the certifying authority referred to in rule 2 (i) as to—

- (a) his knowledge of the phenomena of the vaccine disease;
- (b) his knowledge of the methods of performing vaccination;
- (c) his knowledge of the methods of collecting and storing lymph;
- (d) his ability to recognise a good vesicle and cicatrix;
- (e) his general acquaintance with the phenomena of small-pox;
- (f) his knowledge of the provisions of the Act in so far as they relate to the duties of a vaccinator; and
- (g) his acquaintance with the registers, returns and certificates required to be maintained and issued under the Act.

5. The appointing authority shall, in selecting candidates for the post of public vaccinator, give preference to those candidates who have attended a vaccination class at any of the Medical Schools in India, and have obtained a certificate of competency from the Superintendent of such school.

(b) FEES.

6. The fees for any vaccination operation performed outside the town of Calcutta shall be payable according to the following scale:—

*At a public vaccine station.....Free of charge.*

*At a private residence or at any place other than a public vaccine station.....Four annas for each operation.*

Provided that the total amount payable for any number of operations performed in any one family at the same time shall not exceed eight annas.

7. Every public vaccinator shall grant a printed receipt for each amount received by him as fees. All such amount shall be deposited at the office of the Civil Surgeon or other principal Civil or Military Medical Officer, or other authorised officer in charge of vaccination, every Saturday or oftener if that officer so orders, and the said officer shall, once a week, remit the same to the Treasury.

Provided that, if the amount realised at a public vaccine station at any time exceeds the sum of Rs. 25, such amount shall forthwith be deposited as aforesaid.

(c) VACCINATION OF FEMALES.

8. If the head vaccinator, or, where there is no head vaccinator, the vaccinator considers that any female who, from the custom of the country, is unable to attend at the public vaccine station, is too poor to pay the fee payable for vaccination at a private residence, he shall report the fact to the Civil Surgeon or other principal Civil or Military Medical Officer, or, in municipalities elsewhere than at the head-quarters of the district, to the Chairman, Vice-Chairman or Ward Commissioner concerned, who may, if he concurs in the vaccinator's opinion, direct that the whole or any portion of the fee be remitted.

(d) SUPPLY OF LYMPH

9. Lanoline lymph obtained from the Animal Vaccine Depot shall ordinarily be used in all vaccine operations:

Provided that lymph—

(a) taken direct from a calf, or

(b) from the arm of a perfectly healthy subject, may also be employed on condition that it be at once transferred to the arm of the unprotected person or child.



[illegible]

Serial Number		Date of operation		CHILD						Caste	Parent's or guardian's name	Resi- dence		Name of Vaccinator	Results		Unsuccessful	Not ascertained	Remarks
1	2	3	4	Sex	Age			Actual Age				Street number	Locality		Successful	Doubtful			
					Under one year	Over one and under six years	Above six years	Years	Months										
5	6	7	8	9	10	11	12	13	14	15	16	17	18	19					

11. The annual return required to be submitted by the Superintendent of Vaccination under section 32 shall be in the following form :—

ANNUAL RETURN OF VACCINATION FOR THE YEAR.

1	Number.		
2	Circle & District.		
3	Population according to census.		
4	Average population per square mile.		
5	Average number of vaccinators * employed throughout the season.		
6	Total number of persons vaccinated.		
7	Average number of persons vaccinated by each vaccinator.		
8	Total.	Primary vaccination successful.	
9	Under one year.		
10	Over one year and under six years.		
11	Above six years.		
12	Total of all ages.	Re-vaccination.	
13	Total.		
14	Successful.		
15	Primary.		
16	Re-vaccination.	Percentage of successful cases.	
17	Persons successfully vaccinated per 1,000 of population.		
18	Christians.		
19	Hindus.		
20	Muhammadans.	Class of total number vaccinated.	
21	Other races.		
22	Total.		
23	Number.	Average annual number of persons successfully vaccinated during previous five years.	
24	Ratio per 1,000 population		
25	Number.	Average annual number of deaths from small-pox during previous five years.	
26	Ratio per 1,000 population.		

*Annual Return of vaccinations for the year.*

12. The minutes of notices of vaccination which a Registrar of Births is required to enter under section 20 shall be in the form of a counterfoil for Schedule E to the Act, and shall contain the following headings:—

- (a) Name and address of person to whom notice has been issued.
- (b) Name of child.
- (c) Date of birth.
- (d) Date of notice.
- (e) Number of entry in birth register.
- (f) Signature of Registrar.

18. The duplicate of certificates which a Registrar of Births is required to register under section 20, and the further particulars required by section 21, shall be in the following form:—

Register of Vaccination.

Serial No.	Name of child.	Date of birth.	Number of entry in register of birth.	Date of notice (Schedule F)	Date of certificate of successful Vaccination. (Schedule C)	Date of certificate of insusceptibility (Schedule B.)	Date of certificate of postponed vaccination (Schedule A)	Signature of Registrar.
1	2	3	4	5	6	7	8	9

14. The monthly return of cases which (under section 23 read with section 25) every Registrar of Births is required to transmit to the Superintendent of Vaccination, or Civil Surgeon, or other principal Civil or Military Medical Officer of the district or cantonment shall be in the following form:—

Return of cases in which notice of vaccination has been sent, but certificate has not been received for the month of

Name of child	Name of parent or guardian	Residence	Date of issue of notice
1	2	3	4

N. B.—A case once included in the return need not be entered in any future return.

15. (i) A register shall be kept at every public vaccine station in which shall be entered, in the following form, all sums received as fees by any public vaccinator attached to such station:—

#### FORM A.—RECEIPTS.

Register of receipts under Bengal Act V of 1880 at the Vaccine Depot in the Municipality of District of

Number.	Date.	From whom received.	Amount received.	Initials of vaccinator.	Child's name and number on vaccination register (to be filled in when the entry in the vaccination register is made.)
1	2	3	4	5	6

(ii) A register shall also be kept at every such station in which shall be entered in the following form the amounts expended by any public vaccinator attached to the station:—

#### FORM B.—DISBURSEMENTS.

Register of Expenditure under Bengal Act V of 1880 at the Public Vaccine Depot for the month of

Number.	Date.	On what account expended.	Amount.	Initials of vaccinator.
1	2	3	4	5

16. Every Registrar of Births shall keep a register of vaccination in the following form, of which columns 1, 2, 3, 4 and 5 shall be filled up on issue of the notice referred to in section 18, and the remaining columns on receipt of the duplicate certificate mentioned in section 19:—

Register of vaccination for

Serial No.	Name of child.	Date of birth.	No. of entry in register of birth.	Date of notice Schedule E.	Date of certificate of successful vaccination Schedule C.	Date of certificate of insusceptibility - Schedule B.	Signature of Registrar.
1	2	3	4	5	6	7	8

17. The Registrar of Births shall, as soon after the first of every month as possible, forward a return to the Civil Surgeon or other principal Civil or Military Officer, or other officer in charge of vaccination, in the following form, showing all cases in which a notice has been served under section 3 or a certificate of postponement granted under section 5, and in which the period mentioned in such notice or certificate has expired without receipt of a certificate of successful vaccination under section 5, or of insusceptibility under section 6:—

*Return of cases in which notice of vaccination has been served but certificate has not been received for the month of*

Name of child.	Name of parent or guardian.	Residence	Date of issue of notice.
1	2	3	4

*N. B.*—A case once returned in this form need not be entered again, except in the case of a fresh postponement.

## **GENERAL VACCINATION ACT**

### **(f) GENERAL INSTRUCTIONS.**

18. Whenever it shall come to the notice of a public vaccinator that any child required to be vaccinated according to the provisions of the Act is still unprotected, he shall request the parent or guardian of such child to have the same so vaccinated forthwith, and shall explain to him the penalties he may incur under the Act if he fails to do so; and if such parent or guardian does not comply with the vaccinator's requisition the latter shall at once bring the matter to the notice of the Civil Surgeon or other principal Civil or Military Medical Officer of the district or cantonment, or other authorized officer in charge of vaccination.

19. Whenever it shall come to the notice of a public vaccinator that a person whose age exceeds 14 years is still unprotected he shall request such unprotected person to submit himself to be vaccinated forthwith; and in the event of the latter failing to do so, the public vaccinator shall at once bring the matter to the notice of the Superintendent of Vaccination in order that the said unprotected person may be served with a notice under section 11.

20. When public vaccine stations have been appointed under the Act and the days and hours of the public vaccinators' attendance at such stations have been fixed and published under section 14 (read with section 25), the public vaccinators attached to each vaccine station shall regularly attend thereat on the specified days and within the specified hours.

21. When a child has, under the provisions of section 4, been re-vaccinated, the fact of such re-vaccination shall be entered by the vaccinator in the appropriate vaccine register.

## ACT NO. I OF 1871.

### THE CATTLE TRESPASS ACT, 1871.

(Received G. G.'s Assent on 18th January, 1871.)

An Act to consolidate and amend the Law relating to Trespasses by Cattle. (As amended up to 1927).

Whereas it is expedient to consolidate and amend the law relating to trespasses by cattle; it is hereby enacted as follows:—

#### CHAPTER I.

##### Preliminary.

Title and extent. 1. (1) This Act may be called "The Cattle Trespass Act, 1871;" and

(2) It extends to the whole of British India, except the Presidency towns and such local areas as the Local Government, by notification in the official Gazette, may from time to time, exclude from its operation.

(3) (Repealed by Act X of 1914 I. C.)

Repeal of acts. 2. The Acts mentioned in the Schedule hereto annexed are repealed.

References to repealed Acts. References to any of the said Acts in Acts passed subsequently thereto shall be read as if made to this Act.

All pounds established, pound-keepers appointed, and villages determined, under Act No. III of 1857 (relating to trespasses by cattle), shall be deemed to be, respectively, established, appointed and determined under this Act.

3. In this Act:—

Interpretation clause. "officer of police" includes also village watchmen; and "cattle" includes also elephants, camels, buffaloes, horses, mares, geldings, ponies, colts, fillies, mules, asses, pigs, rams ewes, sheep, lambs, goats, and kids; [and

"local authority" means any body of persons for the time being invested by law with the control and administration of any matters within a specified area; and

"local fund" means any fund under the control or management of a local authority].

#### NOTES.

The words within brackets have been added by Act I of 1891.

#### CHAPTER II.

##### POUNDS AND POUND-KEEPERS.

Establishment of pounds 4. Pounds shall be established at such places as the Magistrate of the District, subject to the general control of the Local Government from time to time, directs.

The village by which every pound is to be used shall be determined by the Magistrate of the District.

## NOTES.

The maintenance of private cattle pounds is incompatible with the provisions of this Act. Bir Bikram Deo *vrs.* Secretary of States, 16 C. W. N. 862=89, Cal. 615 (P. C.)

Control of pounds, rates of charge for feeding impounded cattle.

Appointment of pound-keepers.

Ex-officio pound-keepers in Madras and Bombay.

(patils) the heads of villages,

Suspension or removal of pound-keepers

Pound-keeper may hold other offices.

Pound-keeper to be public servants."

5. The pounds shall be under the control of the Magistrate of the District; and he shall fix, and may, from time to time, alter the rates of charge for feeding and watering impounded cattle.

6. The Magistrate of the District shall also appoint for each pound, a pound-keeper.

Provided that, in the Presidency of Fort St. George, the heads of villages and, in the Presidency of Bombay, the police-patils or (where there are no police-patils) the heads of villages, shall be ex-officio the keepers of village pounds.

Every pound-keeper appointed by the Magistrate of the District may be suspended or removed by such Magistrate.

Any pound-keeper may hold simultaneously any other office under Government.

Every pound-keeper shall be deemed a "public servant" within the meaning of the Indian Penal Code.

## DUTIES OF POUND-KEEPERS.

To keep registers and furnish returns.

7. Every pound-keeper shall keep such registers, and furnish such returns, as the Local Government from time to time, directs.

To register seizures.

8. When cattle are brought to a pound, the pound-keeper, shall enter in his register—

(a) the number and description of the animals,

(b) the day and hour on and at which they were so brought,

(c) the name and residence of the seizer, and

(d) the name and residence of the owner, if known, and shall give the seizer or his agent a copy of the entry.

To take charge of and feed cattle.

9. The pound-keeper shall take charge of, feed, and water the cattle until they are disposed of as hereinafter directed.

## CHAPTER III.

## IMPOUNDING CATTLE.

Cattle damaging land. 10. The cultivator or occupier of any land or any person, who has advanced cash for the cultivation of the crop or produce on any land, or the vendee or mortgagee of such crop or produce or any part thereof,

may seize, or cause to be seized any cattle trespassing on such land, and doing damage thereto, or to any crop or produce thereon, and "send them, or cause them to be sent, within twenty-four hours" to the pound established for the village in which the land is situate.



Police to aid seizures.

All officers of police shall, when required, aid in preventing (a) resistance to such seizures, and (b) rescues from persons making such seizures.

### NOTES.

The words within inverted comma in the section have been substituted for the words "take or cause them to be taken, without unnecessary delay" by Act I of 1898 sec. 3.

Forcible rescue of cattle after lawful seizure, right of private defence against owners of lawfully seized cattle attempting to rescue it. No offence when the right of private defence not exceeded. *Udit Singh and others vrs. The King-Emperor*, 6 P. L. T. 838.

A person in exclusive possession of a land is the occupier of the land. The question of title does not affect the right of the occupier to seize the cattle trespassing on the land in his possession. *Emperor vrs. Saudagar and others*, 32 I. C. 655.

A watchman watching crops on land on behalf of a cultivator or occupier is entitled to seize cattle trespassing on land under his charge, when he is given general instructions to seize them while so trespassing. In *re Subbaraya Pillai*, 31 I. C. 372.

Persons who let the land on lease are not occupiers. Onus on complainant to show that he was a person entitled to seize the cattle or cause it to be seized. *Manik Chandra Roy vrs. Ismail*, 23 C. W. N. 387.

Cattle damaging public roads, canals and embankments

11. Persons in charge of public roads, pleasure-grounds, plantations, canals, drainage-works, embankments, and the like, and officers of police, may seize, or cause to be seized, any cattle doing damage to such roads, grounds, plantations, canals, drainage-works, embankments, and the like, or the sides or slopes of such roads, canals, drainage works, or embankments, or found straying thereon, and "shall send them or cause them to be sent, within twenty-four hours," to the nearest pound.

### NOTES.

The words within inverted comma have been substituted for the words "take them without immediate delay" by Act I of 1891 sec. 4.

Fines for cattle impounded.

12. For every head of cattle impounded as aforesaid, the pound-keeper shall levy a fine in accordance with the scale for the time being prescribed by the Local Government in this behalf by notification in the official Gazette. Different scales may be prescribed for different local areas.

All fines so levied shall be sent to the Magistrate of the District through such officer as the Local Government may direct.

A list of the fines and of the rates of charge for feeding, and watering cattle shall be posted in a conspicuous place on or near to every pound.

### NOTES.

This section was substituted for the original section 12, by Act XVII of 1921 (I. C.) Sec. 2.

The following scale of fines have been prescribed by the Government of Bihar and Orissa:—

Notification No. 660 L. S. G. dated the 16th January, 1924.—In exercise of the powers conferred by section 12 of the Cattle Trespass Act, 1871 (Act I of 1871) as amended by the Cattle Trespass (Amendment) Act 1921 (Act XVII of 1921) the Government of Bihar and Orissa are pleased to prescribe the following scale of fines for cattle impounded under the first mentioned Act.

	Rs.	A.	P.
Elephant	8	0	0
Camel or buffalo	0	12	0
Horse, mare, gelding, pony, colt, filly, mule, bullock, cow or heifer	0	6	0
Colt, ass, pig	0	8	0
Ram, ewe, sheep, lamb, goat or kid	0	2	0

The notification will take effect in the districts of Cuttack, Balasore and Sambalpur from the 1st April, 1925, and in the remaining districts in the province from the 1st April, 1924.

## CHAPTER IV.

### DELIVERY OR SALE OF CATTLE.

Procedure when owner claims the cattle and pays fines and charges.

13. If the owner of the impounded cattle or his agent appear and claim the cattle, the pound-keeper shall deliver them to him on payment of the fines and charges incurred in respect of such cattle.

The owner or his agent, on taking back the cattle, shall sign a receipt for them in the register kept by the pound-keeper.

Procedure if cattle be not claimed within a week.

14. If the cattle be not claimed within seven days from the date of their being impounded, the pound-keeper shall report the fact to the officer-in-charge of the nearest police-station, or to such other officer as the Magistrate of the District appoints in this behalf.

Such officer shall thereupon stick up in a conspicuous part of his office a notice stating—

- (a) the number and description of the cattle,
- (b) the place where they were seized,
- (c) the place where they are impounded,

and shall cause proclamation of the same to be made by beat of drum in the village and at the market-place nearest to the place of seizure.

If the cattle be not claimed within seven days from the date of the notice, they shall be sold by public auction by the said officer, or an officer of his establishment deputed for that purpose, at such place and time, and subject to such conditions, as the Magistrate of the District, by general or special order, from time to time directs:

Provided that, if any such cattle are, in the opinion of the Magistrate of the District, not likely to fetch a fair price if sold as aforesaid, they may be disposed of in such a manner as he thinks fit.

**Delivery to owner**  
**disputing legality of**  
**seizure, but making de-**  
**posit.**

15. If the owner or his agent appear and refuse to pay the said fines and expenses, on the ground that the seizure was illegal, and that the owner is about to make a complaint under section twenty, then, upon deposit of the fines and charges incurred in respect of the cattle, the cattle shall be delivered to him.

**Procedure when**  
**owner refuses or omits**  
**to pay the fines or ex-**  
**penditures.**

16. If the owner or his agent appear and refuse to omit to pay or (in the case mentioned in section fifteen) to deposit the said fines and expenses, the cattle, or as many of them as may be necessary, shall be sold by public auction by such officer at such place and time, and subject to such conditions, as are referred to in section fourteen.

**Deduction of fines**  
**and expenses.**

The fines leviable, and the expenses of feeding and watering, together with the expenses of sale, if any, shall be deducted from the proceeds of the sale.

**Delivery of unsold**  
**cattle and balance of**  
**proceeds**

The remaining cattle and the balance of the purchase money, if any, shall be delivered to the owner or his agent, together with an account showing—

- (a) the number of cattle seized,
- (b) the time during which they have been impounded,
- (c) the amount of fines and charges incurred,
- (d) the number of cattle sold,
- (e) the proceeds of sale, and
- (f) the manner in which those proceeds have been disposed of.

**Receipts.**

The owner or his agent shall give a receipt for the cattle delivered to him, and for the balance of the purchase-money (if any) paid to him according to such account.

**Disposal of fines,**  
**expenses and surplus**  
**proceeds of sale.**

17. The officer by whom the sale was made shall send the Magistrate of the District the fines so deducted. The charge for feeding and watering, deducted under section sixteen, shall be paid over to the pound-keeper, who shall also retain and appropriate all sums received by him on account of such charges under section thirteen.

The surplus of unclaimed proceeds of the sale of cattle shall be sent to the Magistrate of the District, who shall hold them in deposit for three months, and, if no claim thereto be preferred and established within that period, shall, at its expiry, dispose of them as hereinafter provided.

**Application of fine**  
**and unclaimed proceeds**  
**of sales.**

18. Out of the sums received on account of fines and the unclaimed proceeds of the sale of cattle, shall be paid—

(a) the salaries allowed to pound-keepers under the orders of the Local Government;

(b) the expenses incurred for the construction and maintenance of pounds, or for any other purpose connected with the execution of this Act;

and the surplus (if any) shall be applied under orders of the Local Government, to the construction and repair of roads and bridges, and to other purposes of public utility.

Officer and pound-keepers not to purchase cattle at sales under Act.

Pound-keeper when not to release impounded cattle.

Delivery is ordered by a Magistrate or Civil Court.

19. No officer of police, or other officer or pound keeper appointed under the provisions herein contained, shall, directly or indirectly, purchase any cattle at a sale under this Act.

No pound-keeper shall release or deliver any impounded cattle otherwise than in accordance with the former part of this chapter, unless such release or

## CHAPTER V.

### COMPLAINTS OF ILLEGAL SEIZURE OR DETENTION.

Power to make complaints.

20. Any person whose cattle have been seized under this Act, or having been so seized, have been detained in contravention of this Act, may, at any time within ten days from the date of the seizure, make a complaint to the Magistrate of the District or any Magistrate authorized to receive and try charges without reference by the Magistrate of the District.

### NOTES.

A Magistrate, who is authorised under section 190 of the Code of Criminal Procedure, 1898, to take cognisance of offences upon receiving complaints, can take cognisance of complaints under section 20 of the Cattle Trespass Act, 1871, although he is not specially authorized in that behalf. *Emperor vs. Vishvanath Vishnu Joshi*, 44 Bom. 42.

Procedure on complaint.

21. The complaint shall be made, by the complaint in person, or by an agent personally acquainted with the circumstances. It may be either in writing or verbal. If it be verbal, the substance of it shall be taken down in writing by the Magistrate.

If the Magistrate, on examining the complainant or his agent sees reason to believe the complaint to be well found, he shall summon the person complained against, and make an inquiry into the case.

Compensation for illegal seizure or detention.

22. If the seizure or detention be adjudged illegal, the Magistrate shall award to the complainant, for the loss caused by the seizure or detention, reasonable compensation, not exceeding one hundred rupees, to be paid by the person who made the seizure or detained the cattle together with all fines paid and expenses incurred by the complainant in procuring the release of the cattle;

Release of the cattle

and, if the cattle have not been released, the Magistrate shall, besides awarding such compensation, order their release, and direct that the fines and expenses leviable under this Act shall be paid by the person who made the seizure or detained the cattle.

### NOTES.

Offence under this section may be tried in a summary way. See section 260 (1) (m). Cr. P. C.

## CATTLE TRESPASS ACT

By section 4 (o) of the Code of Criminal Procedure, the word " offence " includes an act in respect of which a complaint may be made under section 20 of the Cattle Trespass Act; and a person against whom an order under section 22 of the Cattle Trespass Act is made is a " person convicted on a trial " and is entitled to appeal under section 407 of the Code of Criminal Procedure. In the matter of Ponnusami and another, 20 Mad. 517.

The illegal seizure or detention of cattle, referred to in sec. 20 of the Cattle Trespass Act is an offence under sec. 4 (o) of the Criminal Procedure Code and is, by virtue of the last clause of Sch. II thereof triable by any Magistrate; and though, under sec. 20 of the Cattle Trespass Act, a complaint of such illegal seizure or detention must be entertained by a District Magistrate or one specially authorized as required by the section, such magistrate has power, under section 192 to transfer such cases, after taking cognisance, to any Subordinate Magistrate for trial. *Budhan Mahto vrs. Issur Singh*, 84 Cal. 926.

No compensation under section 22 of the Cattle Trespass Act ought to be awarded when no compensation was claimed and when no allegation was made as to the loss caused by the seizure of the cattle. The person under whose orders the cattle are seized is liable to compensate the complainant for he is equally one of the persons, who seized the cattle with those who directly seized them under his orders. The persons accused of an offence under the Cattle Trespass Act should be examined under sec. 342 Cr. P. Code. *Bajinath Sahay vrs. The King-Emperor*, 4 P.L.T. 231.

Recovery of compensation. 23. The compensation, fines and expenses mentioned in section twenty-two may be recovered as if they were fines imposed by the Magistrate.

### NOTES.

See sections 68 to 70 of the Indian Penal Code, fines are to be realised according to sec. 386 of the Code of Criminal Procedure Code. Compare also sec. 25 of the General Clauses Act (Act X of 1897).

## CHAPTER VI.

### PENALTIES.

Penalty for forcibly opposing the seizure of cattle or rescuing the same. 24. Whoever forcibly opposes the seizure of cattle liable to be seized under this Act, and whoever rescues the same after seizure, either from a pound or from any person taking or about to take them to a pound, such person being near at hand and acting under the powers conferred by this Act,

shall, on conviction before a Magistrate, be punished with imprisonment for a period not exceeding six months, or with fine not exceeding five hundred rupees, or with both.

### NOTES.

Forcible rescue of cattle after lawful seizure illegal—right of private defence against owners of lawfully seized cattle attempting to rescue it. *Udit Singh vrs. The King Emperor*, 6 P. L. T. 888.

A conviction under sec. 24 of the Cattle Trespass Act can only be supported if the cattle were "liable to be seized under the Act." If the cattle were not "liable to be seized" their rescue was no offence, and the fact that the rescuers had a special remedy under section 20 did not affect the matter. *Queen-Empress vrs. Lakshmanna*, 24 Mad. 818.

For a conviction under this section there must be a finding as to trespass or damage as contemplated in sec. 10. *Sukhnandan Rai and others vrs. Emperor*, 48, I. C. 445; *Bhowanath Singh and others vrs. Emperor*, 43 I. C. 618=4 P. L. W. 40.

Driving cattle by shouts and cries constitutes "rescuing" them. *In re Kanma Kondiah and others* 72 I. C. 616.

An offence under this section is not compoundable. As it is a summon's case the accused would be entitled to an acquittal if the complainant failed to prove his case. *Emperor vrs. Julua and another*, 42 All. 202.

Recovery of penalty for mischief committed by causing cattle to trespass 25. Any fine imposed "under the next following section or" for the offence of mischief by causing cattle to trespass on any land, may be recovered by sale of all or any of the cattle by which the trespass was committed, whether they were seized in the act of trespassing or not, and whether they are the property of the person convicted of the offence, or were only in his charge when the trespass was committed.

#### NOTES.

The words within inverted commas have been inserted by sec. 7 of Act I of 1891.

As to the application of section 25 in the case of cattle trespassing on a railway see the Indian Railways Act (Act IX of 1890) sec. 125.

Penalty for damage caused to land or crops or public roads by pigs 26. Any owner or keeper of pigs who, through neglect or otherwise damages or causes or permits to be damaged, any land, or any crop or produce of land, or any public road by allowing such pigs to trespass thereon, shall, on conviction before a magistrate, be punished with fine not exceeding ten rupees.

The Local Government, by notification in the official gazette, may from time to time, with respect to any local area specified in the notification, direct that the foregoing portion of this section shall be read as if it had reference to cattle generally, or to cattle of a kind, described in the notification instead of to pigs only, or as if the words "fifty rupees" were substituted for the words "ten rupees" or as if there were both such reference and such substitution.

*(The rest of the section has been repealed by Act X of 1914).*

#### NOTES.

The expression "public road" in the section includes a railway, and any railway servant may exercise the powers conferred on officers of police by sec. 11 of the Cattle Trespass Act. See sec. 125 (4) of the Indian Railways Act (Act IX of 1890).

To section 26 the second para was added by sec. 8 of Act I of 1891.

Penalty on pound-keeper failing to perform duties.

27. Any pound-keeper releasing or purchasing or delivering cattle contrary to the provisions of section nineteen, or omitting to provide any impounded cattle with sufficient food and water, or failing to perform any of the other duties imposed upon him by this Act, shall, over and above any other penalty to which he may be liable, be punished, on conviction before a magistrate, with fine not exceeding fifty rupees.

Such fines may be recovered by deduction from the pound-keeper's salary.

Application of fines recovered under section 25, 26, or 27.

28. All fines recovered under section twenty-five, section twenty-six or section twenty-seven, may be appropriated in whole or in part as compensation for loss or damage proved to the satisfaction of the convicting Magistrate.

## CHAPTER VII.

### SUITS FOR COMPENSATION.

Saving of right to sue for compensation.

29. Nothing herein contained prohibits any person whose crops or other produce or land have been damaged by trespass of cattle, from suing for compensation in any competent court.

Set-off-

30. Any compensation paid to such person under this Act by order of the convicting Magistrate, shall be set off and deducted from any sum claimed by, or awarded to, him as compensation in such suit.

## CHAPTER VIII.

### SUPPLEMENTAL.

*(This chapter has been added by sec. 9 of Act I of 1891).*

Power of Local Government to transfer certain functions to local authority and direct credit of surplus receipts to local fund.

31. The Local Government may, from time to time, by notification in the official gazette,—

(a) transfer to any local authority, within any part of the territories under its administration in which this Act is in operation, all or any of the functions of the Local Government or the Magistrate of the District under this Act, within the local area subject to the jurisdiction of the local authority; or

(b) direct that the whole or any part of the surplus accruing in any district under section eighteen of this Act shall be placed to the credit of such local fund or funds as may be formed for any local area or local areas comprised in that district. (Certain lines after this have been repealed by Act X of 1914).

## NOTES.

Clause (a). "All funds within municipal limits were transferred to municipalities and the powers and functions of the magistrate under Chapter

# CATTLE TRESPASS ACT

I, II, III, were conferred on municipalities under the Order No. 28, T. M. of 6th October, 1896, as modified by C. O. No. 4 of 16th March, 1897.

Clause (b). Under this section all fines under section 12 and all surplus proceeds under section 18 are to be credited to the Municipal Fund. Fines will be credited to Government. B. Government Municipal, D. L. S. G. No. 1206 of 2nd March, 1898.

## SCHEDULE.

### REPEAL OF ACTS.

(See section 2).

Number and Year.	Title of Act.
III of 1857	... An Act relating to trespasses by cattle.
V of 1860	... An Act to amend Act III of 1857 (relating to trespasses by cattle).
XXII of 1861	... An Act to amend Act III of 1857 (relating to trespasses by cattle).

*Form of Kabuliyat to be executed by Farmers of Cattle Pounds.*

(Being Government Municipal D. L. S. G. Cir. No. 7, T. M. of 9th May, 1905)

I have been appointed by the Municipal Commissioners (or District Board of the district) of Pound-keeper of the pound, hereby agree to pay as rent the sum of Rs. by twelve instalments, that is to say—

Rs.	on the	day of
Rs.	on the	day of
Rs.	on the	day of
Rs.	on the	day of
Rs.	on the	day of
Rs.	on the	day of
Rs.	on the	day of
Rs.	on the	day of
Rs.	on the	day of
Rs.	on the	day of
Rs.	on the	day of

in the district treasury to the credit of the said Municipality or District Board for the right to appropriate to my own use for 1 year from the day of to the day of the pound fines and charges to be levied according to the scale set forth in the Schedule hereunto annexed. And I, further agree to file in the office of the Municipality or District Board within



3 days after due date of payment a duplicate *chalan* or Treasury receipt in proof of such payment. And I further agree that the sum of Rs..... (25 per cent. of the annual rental) deposited by me with the said Municipality or District Board shall be held by such Municipality or Board as security for the due payment of the rent reserved as aforesaid and on non-payment of rent the said sum, or so much thereof as is necessary, shall be appropriated by the said Municipality or District Board as rent; and I promise that upon the appropriation of the entire security deposit or any portion thereof as rent as well as upon the forfeiture of the security for breach of the conditions mentioned herein below, I will forthwith furnish fresh security or make up the deficiency as the case may be; and I further promise that I will take such order with the impounded animals in my charge that no animal shall escape or cause injury to any person or any other animal, and for any injury caused by any impounded animal, I will be personally responsible. And I further agree that I will not assign, sublet, or part with the possession of the pound without the consent in writing of the said Municipality or District Board; that I will not give any gratification to any one bringing cattle to my pound; that I will keep the pound houses and enclosures clean and in good repairs so long as I am pound-keeper and I will execute without undue delay any repairs which the said Municipality or District Board may call on me to execute by a written order; that I will not charge or demand more than the authorised fines, and the sanctioned rates for feeding and watering impounded cattle; that I will provide good and sufficient food and water for the impounded cattle; and that I will keep the registers and furnish the returns required by sec. 7 of Act I of 1871. Should I fail to execute without undue delay any repairs to the pound house which the said Municipality or District Board may call on me to execute by a written order, the said Municipality or District Board may execute the repairs and recover the cost of repairs from me. In the event of my breaking any of the covenants therein contained, the said Municipality or District Board shall be at liberty to remove me from the office of the pound-keeper, and this lease shall thereupon determine, and I shall forfeit without objection the security deposited as above stipulated, and I shall further be liable for all losses on the resale of the pound and the amount of such loss shall be recoverable from me as rent. Should the Municipality or District Board in exercise of the power conferred on it by sec. 6 of Act I of 1871, remove me from the office of pound-keeper for reasons other than a breach of any of the covenants herein contained, I shall be liable to pay rent only for the period during which I have been in actual possession, and I shall be further entitled to a refund of the sum specified above as to be deposited by me, or so much of it as may remain after the payment of rent due. And I also agree that all sums which I become liable to pay, in virtue of this agreement shall be recoverable as a public demand under the provisions of Bengal Act I of 1895.

Note 1. This bond must be stamped in accordance with Article 13 of Schedule 1. Indian Stamp Act, the stamp duty being paid by the pound-keeper under sec. 29 (a) of the Act. It should be registered as required by sec. 9, of the Public Demands Recovery Act. (Act IV of 1914, B. & O.)

# THE LOCAL AUTHORITIES LOANS ACT.

## ACT IX OF 1914.

An Act to consolidate and amend the law relating to the grant of loans to Local Authorities.

**Preamble.** WHEREAS it is expedient to consolidate and amend the law relating to the borrowing powers of local authorities:

It is hereby enacted as follows:—

**Short title and extent.** 1. (1) This Act may be called the Local Authorities Loans Act, 1914. ...

(2) It extends to the whole of British India, including the Sonthal Parganas.

**Definitions.** 2. In this Act, "local authority" means any person legally entitled to the control or management of any local or municipal fund, or legally, entitled to impose any cess, rate, duty or tax within any local area;

"funds" used with reference to any local authority, includes any local or municipal fund to the control or management of which such authority is legally entitled, and any cess, rate, duty or tax which such authority is legally entitled to impose, and any property vested in such authority:

"prescribed" means prescribed by rules under this Act; and

"work" includes a survey, whether incidental to any other work or not.

**Borrowing powers of local authorities.** 3. (1) A local authority may, subject to the prescribed conditions, borrow on the security of its funds or any portion thereof for any of the following purposes, namely:—

- (i) the carrying out of any works which it is legally authorized to carry out,
- (ii) the giving of relief and the establishment and maintenance of relief works in times of famine or scarcity,
- (iii) the prevention of the outbreak or spread of any dangerous epidemic disease,
- (iv) any measures which may be connected with or ancillary to any purposes specified in clauses (ii) and (iii),
- (v) the repayment of money previously borrowed in accordance with law:

Provided that nothing in clause (v) shall be deemed to empower a local authority to fix a period for the payment of any money borrowed thereunder which, when the period fixed for the repayment of the money previously borrowed is taken into account, will exceed the maximum period fixed for the repayment of a loan by or under any enactment for the time being in force.

(2) Nothing in this section shall be deemed to authorize any local authority:—

(a) to borrow or spend money for any purpose for which, under the law for the time being in force, it is not authorized to apply its funds, or

(b) to borrow money by means of the issue of bills or promissory notes payable within any period not exceeding twelve months.

Power to Governor-General in Council to make rules.

4. (1) The Governor-General in Council may make rules consistent with this Act as to—

- (i) the nature of the funds on the security of which money may be borrowed;
- (ii) the works for which money may be borrowed;
- (iii) the manner of making applications for permission to borrow money;
- (iv) the inquiries to be made in relation to such loans, and the manner of conducting such inquiries;
- (v) the cases and the forms in which particulars of applications and proceedings, and orders thereon, shall be published;
- (vi) the cases in which the Local Government may make loans without the previous sanction of the Governor-General in Council, and the cases in which such previous sanction must be obtained;
- (vii) cases in which the Local Government may authorize local authorities to take loans from persons other than the Local Government, and the cases in which the previous sanction of the Governor-General in Council must be obtained to such loans;
- (viii) the manner of recording and enforcing the conditions on which money is to be borrowed;
- (ix) the manner and time of making or raising loans;
- (x) the inspection of any works carried out by means of loans;
- (xi) the instalments, if any, by which loans shall be repaid, the interest to be charged on loans, and the manner and time of repaying loans and of paying the interest thereon;
- (xii) the sum to be charged against the funds which are to form the security for the loan, as costs in effecting the loan;
- (xiii) the attachment of such funds, and the manner of disposing of or collecting them;
- (xiv) the accounts to be kept in respect of loans;
- (xv) the utilization of unexpended balances of loans either in the reduction in any way of the debt of the local authority, or in carrying out any works which that authority is legally authorized to carry out; and the sanction necessary to such utilization;

and as to all other matters incidental to carrying this Act into effect.

(2) The Governor-General in Council may, subject to such conditions and restrictions as he thinks fit, delegate to a Local Government, or to Local Governments generally, all or any of his powers to make rules under subsection (1).

(3) All rules made under this Act shall be published in the Gazette of India, if made by the Governor-General in Council, or, if made by the Local Government in the exercise of a delegated power, in the local official Gazette; and on such publication, shall have effect as if enacted in this Act.

3. If any money borrowed in accordance with the provisions of this Act or any interest or costs due in respect thereof, is or are not repaid according to the conditions of the loan, the Local Government, if itself the lender, may, and, if the Local Government is not the lender, shall, on the application of the lender, attach the funds on the security of which the loan was made. After such attachment, no person, except an officer appointed in this behalf by the Local Government, shall in any way deal with the attached funds; but such officer may do all acts in respect thereof which the borrowers might have done if such attachment had not taken place, and may apply the proceeds in satisfaction of the loan and of all interests and costs due in respect thereof, and of all expenses caused by the attachment and subsequent proceedings:

Attachment not to defeat prior charge, legally made.

Provided that no such attachment shall defeat or prejudice any debt for which the funds attached were previously pledged in accordance with law; but all such prior charges shall be paid out of the proceeds of the funds before any part of the proceeds is applied to the satisfaction of the liability in respect of which such attachment is made.

Issues of short term bills.

6 (1) Subject to the provisions of section 26 of the Indian Paper Currency Act, 1910, the local authorities mentioned in Schedule I and any other local authority to which the Governor-General in Council may, by notification in the Gazette of India, extend the provisions of this section, may, with the previous sanction of the Governor-General in Council, borrow money by means of the issue of bills or promissory notes, payable within any period, not exceeding twelve months, for any purpose for which such local authority may lawfully borrow money under any law for the time being in force:

Provided that the amount of the bills or promissory notes which may be so issued, shall not exceed, when the amount of the other moneys for the time being borrowed by such local authority is taken into account, the total amount which such local authority is empowered by law to borrow.

(2) The Governor-General in Council may, by general or special order, regulate the conditions on which money may be borrowed or repaid under this section.

Loans not to be effected except under this Act.

7. Except as provided by or under this Act, no local authority shall, for any purpose, borrow money upon, or otherwise charge, its funds; and any contract otherwise made for that purpose after the passing of this

Act shall be void:

Provided that nothing herein contained shall be deemed—

(a) to preclude any local authority from exercising the borrowing powers conferred on it by any special enactment now or hereafter in force; or

(b) to affect the power conferred on any local authority by any such enactment to charge its funds, by guaranteeing the payment of interest on money to be applied to any purpose to which the funds of the local authority can legally be applied.

Application of Act  
to loans existing previous  
to the 5th of September,  
1871.

before the fifth day of

Repeals.

thereof:

Provided that all applications, declarations, authorizations, attachments, loans and rules made under any of these enactments shall be deemed to have been made under this Act.

8. The Secretary of State in Council shall be entitled to the remedy mentioned in section 5 for the recovery of any money lent by him to any local authority before the fifth day of September, 1871, and the interest due on such money.

9. The enactments mentioned in Schedule II are repealed to the extent specified in the fourth column

### SCHEDULE I.

(See section 6).

The Corporation of Calcutta.

The Commissioners for the Port of Calcutta.

The Commissioners for the Port of Chittagong.

The Municipal Corporation of the City of Bombay.

The Trustees for the Port of Bombay.

The Corporation of Madras.

The Trustees for the Port of Madras.

The Municipal Committee of Rangoon.

The Commissioners for the Port of Rangoon.

The Municipality of Karachi.

The Trustees of the Port of Karachi.

The Trustees for the Improvement of the City of Bombay.

The Trustees for the Improvement of the City of Calcutta.

### SCHEDULE II.

#### ENACTMENTS REPEALED.

(See section 9).

Year.	No.	Short title	Extent of Repeal
1	2	3	4
1879	XI	The Local Authorities Loan Act, 1879.	So much as is not repealed
1885	XV.	The Local Authorities Loan Act (1879) Amendment Act, 1885.	The whole.
1897	XII	The Local Authorities (Emergency) Loan Act, 1897	So much as is not repealed
1904	III	The Local Authorities Loan Act, 1904	So much as is not repealed
1905	I	The Local Authorities Loan (Amendment) Act, 1905	The whole,
1907	V	The Local Authorities Loan (Amendment) Act, 1907	The whole,
1908	VIII	The Local Authorities Loan (Amendment) Act, 1908	The whole,
1912	XI	The Local Authorities (Emergency) Loans (Amendment) Act, 1912	The whole,

## LOCAL AUTHORITIES LOAN RULES 1915.

India Government Finance Department Notification No. 1020 A dated the 10th November 1914:—In exercise of the powers conferred by section 4 of the Local Authorities Loans Act, 1914 (IX of 1914), the Governor-General in Council is pleased to make the following rules under the said Act:—

<sup>e</sup> Short title, commencement and cancellation of former rules. 1. (1) These rules may be called the Local Authorities Loans Rules, 1915.

(2) They shall come into force on the 1st January, 1915.

(8) The rules published with Notifications Nos. 6565—A and 6566—A dated the 24th October, 1907, as subsequently amended, and with Notification No. 571—A dated the 24th September, 1912, are hereby cancelled, except as regards money borrowed before these rules come into force.

Interpretation. 2. In these rules—

(1) " The Act " means the Local Authorities Loans Act, 1914 (IX of 1914);

(2) " Government loan " means loan taken from Government funds;

(8) " loan " means a loan made, taken or raised, under the Act;

(4) " Non-Government loan " means a loan raised, with the sanction of Government, otherwise than from Government funds; and

(5) " term " of a loan means the period elapsing between the date on which the loan is completely made, taken or raised, and the date on which it is completely repaid.

Limitation of borrowing power. 3. A Local Authority shall not borrow money for any of the purposes specified in clause (i), (ii), (iii) or (iv), of sub-section (1) of section 3, unless the work to be carried out is either—

(a) within the local limits of the area subject to the control of the Local Authority, or

(b) for the benefit of the inhabitants within those limits.

Application. 4. When a Local Authority desires to obtain a loan, it shall submit an application to the Local Government showing—

(1) the purpose for which the loan is required, and where the loan is required for any of the purposes specified in clause (i), (ii), (iii) or (iv) of sub-section (1) of section 3, an estimate of the cost of the entire work or such part of it as it is proposed to carry out from loan funds;

(2) the amount which it is proposed to borrow;

(8) the fund on the security of which it is proposed to borrow;

(4) the law under which the said fund is levied, received or held;

(5) the dates within which the money is to be borrowed, and, when it is proposed to raise a loan in instalments the amount of each instalment, the dates within which the first instalment is to be taken or raised, and the years in which it is intended to take or raise the other instalments;

(6) the rate of interest at which it is proposed to borrow;

(7) the term of years for which the money is to be borrowed, and the method by which it is to be repaid; if it is proposed to repay the loan by

means of a sinking fund, the rate of interest, at which the improvement of such sinking fund is to be calculated, shall also be stated;

(8) an account of the financial position of the Local Authority, including a statement of all existing prior charges on its funds.

#### NOTES.

All applications for loans should be submitted in the form given in Bengal Government Cir. No. 2 M dated the 10th January, 1912.

**Inquiry by Local Government.** 5. The Local Government shall cause such enquiry as it thinks fit to be made into the statements contained in the application and into the utility of the purpose for which the loan is proposed.

**Rejection of application.** 6. If it appears to the Local Government that the money ought not to be borrowed, it shall reject the application.

**Publication of application.** 7. If it appears to the Local Government that the money ought to be borrowed, it shall cause to be published in the local official gazette, and in such other manner as it may deem fit within the local limits of the area subject to the control of the Local Authority, a copy of the application and such particulars in regard to any enquiry made under rule 5 as it may think necessary.

**Disposal of application after publication.** 8. After the expiry of one month from such publication, and after calling for any further information which it may require, and considering any objections which may be preferred, the Local Government may—

(1) reject the application, or

(2) if so empowered grant the loan, or sanction the raising of the loan, as the case may be, or

(3) refer the application for the orders of the Governor-General in Council.

**Government loan.** 9. When a Local Authority submits an application for a Government Loan, the Local Government may grant the loan, provided that the following conditions are fulfilled, namely:—

(a) the term of the loan does not exceed thirty years;

(b) funds are available from the grant placed at the Local Government's disposal for the purpose; and

(c) the rate of interest payable on the loan is not less than 6 per cent. per annum.

If the above conditions are not fulfilled, the Local Government shall forward the application for the orders of Governor-General in Council.

#### NOTES.

In clause (c) the rate of interest has been changed to 6 per cent. from 4 per cent. by Government Notification No. 149A dated the 29th March, 1917.

**Non-Government loans.** 10. When a Local Authority submits an application for a non-Government loan, the Local Government may sanction the application, provided that the following conditions are fulfilled, namely:—

- (a) the term of the loan does not exceed thirty years; and
- (b) the amount of the loan does not exceed five lakhs of rupees.

If the above conditions are not fulfilled, the Local Government shall forward the application for the orders of the Governor-General in Council.

11. (1) In granting or sanctioning a loan, the Governor-General in Council or the Local Government, as the case may be, may prescribe any further conditions not inconsistent with the Act, and with these rules, as he or it may think fit.

(2) In particular and without prejudice to the generality of sub-rule (1) the following conditions shall be prescribed, namely:—

- (i) In the case of every loan, that the Local Government shall determine and the Local Authority shall pay the cost—
  - (a) of any enquiry made under rule 5,
  - (b) of advertisements published under rule 7,
  - (c) of inspections made, and other measures of control taken, under rule 12, and
  - (d) of any other proceedings taken by order of the Governor-General in Council or the Local Government under these rules.
- (ii) In the case of every loan, that the Local Authority shall furnish to the Account Officer of the province, and to the Local Government, any information which they may require regarding its funds and regarding the expenditure of the loan.
- (iii) In the case of a Government loan, that the Local Government, if it considers that the Local Authority has failed to comply with any of the conditions prescribed in respect of the loan or with any of the requirements of these rules, may at any time order that no further payments shall be made on account of such loan, and that any amount advanced with interest thereon shall be repaid immediately.
- (iv) In the case of a non-Government loan, that the Local Authority shall not without the previous approval of the authority which sanctioned the loan, vary the dates within which the raising of the loan, or of the first instalment of it, has been sanctioned; and that if the loan is raised by instalments, the Local Authority shall report, for the previous approval of the sanctioning Authority, the dates within which each further instalment is to be raised.

Control and inspection of works and Accounts.

12. The Local Government shall make such provision as it may deem necessary—

(a) for ascertaining and securing that the money borrowed is duly applied to the purpose for which it has been borrowed. And that the unexpended balance of the loan is not employed otherwise than in accordance with these rules

(b) where the loan is taken for any of the purposes specified in clauses (i), (ii), (iii) or (iv) of sub-section (1) of section 8, for the proper inspection of the work to be carried out: provided that every such work and



the accounts connected therewith shall be open at all times to the inspection of—

- (1) the Superintending or Executive Engineer in whose division the work is situated, and
- (2) of any person who may be authorised to inspect the accounts of the Local Authority, and
- (3) of any other person specially authorised by the Local Government in this behalf.

Procedure on attachment. 13. When the Local Government decides to attach any funds under section 5, the following procedure shall be observed, namely:—

(a) The Local Government shall issue a notice to the Local Authority prohibiting the collection or management of such funds by the Local Authority, and vesting the administration thereof in such officer as the Local Government may appoint. The Local Government shall cause such notice to be published in the local official gazette, and in such other manner as it may deem fit within the local limits of the area subject to the control of the Local Authority.

(b) The officer appointed by the local Government under section 5 shall pay the moneys collected or received under such attachment to the lender or, in the case of a Government loan, into the Government Treasury.

(c) The said officer shall prepare the accounts of moneys, so collected, and of the cost of collection, in such form as the Local Government may, from time to time, direct. He shall deliver a copy of the accounts to the Local Authority, and shall cause a copy to be published in the Local official gazette.

Unexpended balance. 14. If, on the completion of the work or the closing of the account of the transaction for which a Local Authority has borrowed money, the Local Government is satisfied that the whole of the money has not been spent on the purpose for which it was borrowed it shall proceed as follows, namely:—

(a) *In the case of Government loan.*—The Local Government shall direct that the unexpended balance shall be forthwith repaid to Government, and the principal of the debt reduced by an equivalent amount. The Local Government may direct such variation as it may consider necessary on this account in the instalments fixed for the liquidation of the loan.

(b) *In the case of a non-Government loan.*—

(i) If the Local Government itself sanctioned the raising of the loan or if the unexpended balance of the loan does not exceed the amount which the Local Government is competent to sanction as an original loan, it may direct that the unexpended balance shall be utilised either in the reduction in any way of the debt of the Local Authority, or in carrying out any works which that Authority is legally authorised to carry out.

(ii) In cases not falling under clause (i) the Local Government may direct that the unexpended balance shall be utilised in the reduction in any way of the debt of the Local Authority, or, with the previous sanction of the Governor-General in

Council, that the unexpended balance shall be utilised in the carrying out of any works which the Local Authority is legally authorised to carry out.

Interest on Govern- 15. The following provisions shall apply to interest  
ment loans. on Government loans, namely:—

- (1) Interest shall be charged, at the rate agreed upon, yearly or half-yearly, as the Local Government may determine, and shall be reckoned and paid on each instalment from the date on which such instalment is received by the Local Authority.
- (2) The Local Government may, if it thinks fit, direct that compound interest at a rate not less than 6 per cent. per annum shall be paid upon all overdue instalments of interest, or of principal and interest.

Repayment of  
Government loans.

16. With the previous consent of the Local Government, the Local Authority may, at any time, repay the whole or any part of a Government loan in advance of the period fixed by the conditions of the loan.

#### NOTES.

If in any case it should be found that for exceptional reasons a default in the repayment of loans is likely to occur, the earliest possible intimation of the fact should be given to Government, together with full statement of the reasons which have led to this result and of the steps taken to provide for payment. Bengal Government Circular No. 2 T. F., dated the 31st October, 1898.

Accounts of Govern-  
ment loans.

17. The accounts of every Government loan shall be kept by the Account Officer of the province in which it is made.

Sinking fund for non-  
Government loans.

18. If a loan is not repayable by annuities or annual drawings, the Local Authority shall establish a sinking fund, in the following manner, namely:—

- (1) It shall pay out of its income yearly or half-yearly, into such fund, a sum which, accumulating at such rate of compound interest as the Authority sanctioning the loan may fix will be sufficient to secure the liquidation of the loan within the term fixed for its repayment;
- (2) It shall make the first of such payments within one year from the date of taking or raising the loan, unless the sanctioning authority otherwise directs; and
- (3) It shall submit the accounts of its sinking fund annually to the Account Officer of the province, and shall at once make good from its income any amount by which he may certify that the fund is deficient unless the Governor-General in Council sanctions a gradual readjustment.

Loans for railway  
construction repayable  
at option.

19. Notwithstanding anything contained in the foregoing rules it shall be permissible, with the previous sanction of the Governor-General in Council, for a Municipality, which desires to construct a railway, partly from the proceeds of a cess levied for that purpose and partly from borrowed funds, to borrow money by means of debentures repayable at the option of such Municipality.

# THE MUNICIPAL TAXATION ACT, 1881.

BEING

Act No. XI of 1881.

Passed by the Governor-General of India in Council,

(Received the assent of the Governor-General on the 25th February, 1881).

An act to give power to prohibit the levy of municipal taxes in certain cases.

Preamble.

WHEREAS it is expedient to empower the Governor-General in Council to prohibit, in certain cases, the levy of Municipal taxes payable by persons in the military service or by the Secretary of State for India in Council; It is hereby enacted as follows:—

Short title

1. This Act may be called "The Municipal Taxation Act, 1881."

Local extent.

It extends to the whole of British India: and shall come into force at once.

Commencement.

"Municipal committee" defined.

2. In this Act "Municipal Committee" includes a Municipal Corporation or a body of Municipal Commissioners constituted by or under the provisions of any enactment for the time being in force.

Power to prohibit levy of tax.

3. Notwithstanding anything contained in any enactment for the time being in force, the Governor-General in Council may, by an order in writing, prohibit the levy by a Municipal Committee of any specified tax—

(a) payable by any person subject to the Army Discipline and Regulation Act, 1879, or the Indian Articles of War, who is compelled by the exigencies of military duty to reside within the limits of a municipality; or

(b) payable by the Secretary of State for India in Council.

The Governor-General in Council may, by a like order, rescind any such prohibition.

Secretary of State in Council to pay taxes referred to in section 3, clause (a).

4. So long as any order made under section three, prohibiting the levy of a tax on any person mentioned in clause (a) of that section, remains in force, the Secretary of State for India in Council shall be liable to pay to the Municipal Committee mentioned in the order the amount which otherwise would have been payable to such Committee by such person:

Provided that the said Secretary of State in Council shall not be liable to pay any sum in respect of any horse which such person is bound by the regulations of the service to which he belongs, to keep.

Payments to be made in lieu of taxes referred to in section 3, clause (b).

5. So long as any order made under section three, prohibiting the levy of any tax payable by the Secretary of State for India in Council, remains in force, the said Secretary of State in Council shall be liable to pay to the Municipal Committee, in lieu of such

tax, such sums (if any) as an officer from time to time appointed in this behalf by the Local Government may, having regard to all the circumstances of the case, from time to time determine to be fair and reasonable.

Decision of questions arising under this Act. 6. If any question arises whether any duty is military duty within the meaning of this Act, the decision of the Governor-General in Council thereon shall be conclusive.

If any question arises whether any person is compelled as aforesaid to reside within the limits of a municipality or is bound as aforesaid to keep any horse, the decision thereon, of such authority as the Governor-General in Council may, from time to time, appoint in this behalf shall be conclusive.

# THE GOVERNMENT BUILDINGS ACT, 1899.

BEING

Act No. IV of 1899.

PASSED BY THE GOVERNOR-GENERAL OF INDIA IN COUNCIL.

*(Received the assent of the Governor-General on the 3rd February, 1899.)*

An Act to provide for the exemption from the operation of municipal building laws of certain buildings and lands which are the property, or in the occupation, of the Government and situate within the limits of a municipality.

WHEREAS it is expedient to provide for the exemption from the operation of municipal building laws of certain buildings and lands which are the property, or in the occupation, of the Government and situate within the limits of a municipality; IT is hereby enacted as follows:—

Short title, extent and commencement. 1. (1) This Act may be called the Government Buildings Act, 1899.

(2) It extends to the whole of British India; and

(3) It shall come into force at once.

"Municipal authority" defined.

provisions of, any law or

Exemption of certain Government buildings from municipal laws to regulate the erection, etc., of buildings within municipalities.

2. In this Act the expression "municipal authority" includes a municipal corporation or a body of municipal commissioners constituted by, or under the provisions of, any law or enactment for the time being in force.

3. Nothing contained in any law or enactment for the time being in force to regulate the erection, re-erection, construction, alteration or maintenance of buildings within the limits of any municipality shall apply to any building used or required for the public service or for any public purpose, which is the property, or in the occupation, of the Government, or which is to be erected on land which is the property, or in the occupation, of the Government.

Provided that, where the erection, re-erection, construction or material structural alteration of any such building as aforesaid (not being a building connected with Imperial defence, or a building the plan or construction of which ought, in the opinion of the Government, to be treated as confidential or secret) is contemplated, reasonable notice of the proposed work shall be given to the municipal authority before it is commenced.

Objections or suggestions as to erections, etc., of certain Government buildings within municipalities how to be made and dealt with.

4. (1) In the case of any such building as is mentioned in the last preceding section (not being a building connected with Imperial defence or a building the plan or construction of which ought, in the opinion of the Government, to be treated as confidential or secret), the municipal authority, or any person authorized by it in this behalf, may, with the permission of the Local Government previously obtained, but not otherwise, and subject to any restrictions or conditions

which may, by general or special order, be imposed by the Local Government, inspect the land and building and all plans connected with its erection, re-erection, construction or material structural alteration, as the case may be, and may submit to the Local Government a statement in writing of any objections or suggestions which such municipal authority may deem fit to make with reference to such erection, re-erection, construction or material structural alteration.

(2) Every objection or suggestion submitted as aforesaid shall be considered by the Local Government, which shall, after such investigation (if any) as it shall think advisable, pass orders thereon, and the building referred to therein shall be erected, re-erected, constructed or altered, as the case may be, in accordance with such orders:

(8) Every order passed by the Local Government under this section shall be subject to revision by the Governor-General in Council, but not otherwise, and the decision of the Governor-General in Council thereon shall be final.

# MOTOR VEHICLES ACT, 1914.

ACT No. VIII OF 1914.

PASSED BY THE GOVERNOR-GENERAL OF INDIA IN COUNCIL.

*(Received the assent of the Governor-General on the 28th February, 1914.)*

An Act to consolidate and amend the law relating to Motor Vehicles in British India.

WHEREAS it is expedient to consolidate and amend the law relating to motor vehicles in British India; It is hereby enacted as follows:—

## PART I.

### PRELIMINARY.

Short title, extent and commencement. 1. (1) This Act may be called the Indian Motor Vehicles Act, 1914.

(2) This Act, except Part III thereof, extends to the whole of British India, including British Baluchistan, the Sonthal Parganas and the Pargana of Spiti. Part III extends in the first instance only to the Provinces of Madras, Bombay, Bengal, the United Provinces of Agra and Oudh, the Punjab, Burma, Bihar and Orissa, the North-West Frontier Province and Delhi. The Local Government of any other Province may, by notification in the local official Gazette, extend Part III to the whole or any part of such province.

(3) It shall come into force on such date as the Governor-General in Council, by notification in the Gazette of India, may direct.

### NOTES.

This act came into force on and with effect from the 1st April, 1915, *vide* Government of India Notification No. 1065C, dated 25th February, 1915.

Definitions. 2. " Motor Vehicle " includes a vehicle, carriage or other means of conveyance propelled, or which may be propelled, on a road by electrical or mechanical power either entirely or partially;

" prescribed " means prescribed by rules under this Act;

" public place " means a road, street, way or other place, whether a thoroughfare or not, to which the public are granted access or over which they have a right to pass.

## PART II.

### PROVISIONS OF GENERAL APPLICATION.

Prohibition of driving motor vehicle by persons under 18. 3. (1). No person under the age of eighteen years shall drive a motor vehicle in any public place.  
(2). No owner or person in charge of a motor vehicle shall allow any person under the age of eighteen years to drive the same in any public place; and in the event of a contra-

vention of sub-section (1), the Court may presume that the motor vehicle was driven with the consent of the owner or person in charge.

**Duty to stop vehicle or regulating traffic and in case of accident.** 4. The person in charge of a motor vehicle shall cause the vehicle to stop and to remain stationary so long as may reasonably be necessary—

(a) when required to do so by any police-officer for the purpose of regulating traffic or of ascertaining his name and address with a view to prosecuting such person under this Act or for any purpose connected with the enforcement of the provisions of this Act or the rules thereunder, or

(b) when required to do so by any person having charge of any animal if such person apprehends that the animal is, or will be, alarmed by the motor vehicle, or

(c) when he knows or has reason to believe that an accident has occurred to any person or to any animal or vehicle in charge of a person owing to the presence of the motor vehicle and he shall also, if so required, give his name and address and the name and address of the owner of such motor vehicle.

**Reckless driving.** 5. Whoever drives a motor vehicle in a public place recklessly or negligently, or at a speed or in a manner which is dangerous to the public, having regard to all the circumstances of the case, including the nature, condition and use of the place, and the amount of traffic which actually is at the time, or which might reasonably be expected to be, in the place, shall, on conviction, be punishable with fine which may extend to five hundred rupees.

## NOTES.

Criminal rashness is hazarding a dangerous or wanton act with the knowledge that it is so and it may cause injury, but without intention to cause injury or knowledge that it will be probably caused. The criminality lies in running the risk of doing such an act with recklessness or indifference as to consequence. Criminal negligence is the gross and culpable neglect or failure to exercise that reasonable and proper care and precaution to guard against injury either to the public generally or to an individual in particular, which, having regard to all the circumstances out of which the charge arises, was the imperative duty of the accused person to have adopted. A person driving at night a motor car along a portion of a road which was closed to traffic for repairs cannot be reasonably expected to take precautions against the chance of coolies sleeping on that portion. Two coolies who were so sleeping with their bodies covered except for their faces having been run over and killed by the accused driving over them in a motor car in the above circumstances, the latter could not be held to have caused their death by rash and negligent act. *H. W. Smith vs. Emperor*. 80. C. W. N. 66.

The mere fact of deviating from a line of traffic does not necessarily amount to negligently, recklessly or dangerously driving a car; it depends on the circumstances set out in Sec. 4 of the Motor Vehicles Act. *Emperor vs. Khodabux*. 97 I. C., 978 = 1926, Bom. 564 (A. I. R.) = 28 Bom. L. R. 1066.



## PART III.

## LICENSING AND CONTROL.

**Licensing of drivers.** 6. No person shall drive a motor vehicle in a public place unless he is licensed in the prescribed manner, and no owner or person in charge of a motor vehicle shall allow any person who is not so licensed to drive it:

Provided that, subject to rules made by Local Government in this behalf, this section shall not apply to a person receiving instruction in driving a motor vehicle.

**Transfer of licence.** 7. The holder of a licence shall not allow it to be used by any other person.

**Production of licence.** 8. The driver of a motor vehicle shall produce his licence upon demand by any police-officer.

## NOTES.

The words 'upon demand' are clear and can have only one meaning, namely, at once directly the demand is made. The fact that the driver has taken out a licence but left it at home is not sufficient to exonerate him from the offence. *Emperor vs. Madan Mohan Nath Raina*, 58 I. C. 148=43 All. 123. There is no prohibition against the driving of a car by a properly licensed person who has not got his licence with him. What is an offence is the non-production of the licence upon demand by any police officer. *Dekhli Kumbi vs. Emp.* 65. I. C. 425=1922 Nag. 71. A police officer can ask the driver of a motor vehicle for his licence even in the private grounds of a person. It is a harsh way of administering the law to institute a prosecution against a properly licensed chauffeur simply because he may have not the licence on his person. The offence, if at all, is a technical one and does not merit a prosecution. *Aklu and another vs. Emp.* 7. P. L. T. 542=97. I. C. 48=27. Cr. L. J. 1072.

**Extent of validity of licence to drive.** 9. Every licence to drive a motor vehicle shall be valid in such area as may be specified therein:

Provided that no licence shall specify any area outside the province in which it is granted, unless it is issued by such authority and in accordance with such conditions and restrictions as the Governor-General in Council may impose.

**Registration of motor vehicles.** 10. (1) The owner of every motor vehicle shall cause it to be registered in the prescribed manner.

(2) Such registration shall be valid in such area as may be specified in the certificate of registration:

Provided that no certificate of registration shall be valid outside the province in which it is granted unless it is issued in accordance with such conditions and restrictions as the Governor-General in Council may impose.

**Power of Local Government to make rules.** 11. (1) The Local Government, subject to the condition of previous publication, shall make rules for the purpose of carrying into effect the provisions of this Act and of regulating, in the whole or any part of the territories under its administration, the use of motor vehicles or any class of motor vehicles in public places.

## MOTOR VEHICLES ACT

(2) In particular, and without prejudice to the generality of the foregoing powers, the Local Government may make rules for all or any of the following purposes, namely:—

(a) providing for the registration of motor vehicles, and the conditions subject to which such vehicles may be registered, the fees payable in respect of and incidental to registration, the issue of certificates of registration, the notification of any changes of ownership, and (subject to the provisions of section 10), the area in which certificates of registration shall be valid;

(b) providing for facilitating the identification of motor vehicles by the assignment of distinguishing numbers to such vehicles and the displaying of number and name plates thereon, or in any other manner;

(c) regulating the construction and equipment of motor vehicles including the provision and use of lights, bells, horns, brakes, speed-indicators or other appliances;

(d) prescribing the authority by which, and the conditions subject to which, drivers of motor vehicles or any class of such drivers may be licensed, the fees payable in respect of such licences and (subject to the provision of section 9), the area within which, and the duration for which, licences shall be valid;

(dd) *prescribing the authority by which, and the conditions and imitations subject to which, licences may be suspended or cancelled; (added by Sec. 2 of Act XXVII of 1920).*

(e) prescribing the conditions subject to which, and the fees (if any) on payment of which, motor vehicles may be let or plied for hire in public places, generally or in any particular public place;

(f) prescribing the precautions to be observed when motor vehicles are standing in any public place;

(g) limiting the speed at which motor vehicles may be driven generally or in any particular public place;

(h) prohibiting or regulating the driving of motor vehicles in public places, where their use may, in the opinion of the Local Government, be attended with danger or inconvenience to the public; and

(i) providing generally for the prevention of danger, injury or annoyance to the public or any person, or of danger or injury to property, or of obstruction to traffic.

(8) All rules made under this section shall be published in the local official Gazette; and, on such publication, shall have effect as if enacted in this Act.

### Posting of notices.

12. The prescribed authority shall give, in the prescribed manner, public notice of any rule, made by the Local Government under section 11, prohibiting or regulating the driving of motor vehicles in any public place; or limiting the speed of motor vehicles in any such place; and for the purpose of giving effect to any such rule, shall display conspicuous notices at or near the place to which the rule refers.

### Power to Local Government to exclude areas or motor vehicles from this Part.

13. The Local Government may, by notification in the local official Gazette, exclude any area specified in such notification from the operation of this Part; and may, by a like notification, exempt either

generally or for a specified period any motor vehicles or class of motor vehicles from the operation of all or any of the provisions of this Part.

## PART IV.

### MOTOR VEHICLES TEMPORARY LEAVING OR VISITING BRITISH INDIA.

Power of Governor-General in Council to make rules.

4. (1) The Governor-General in Council may make rules for all or any of the following purposes, namely:—

- (i) for the grant and authentication of any travelling passes, certificates or authorities for the use of persons temporarily taking their motor vehicles out of British India, or to drivers of such vehicles when proceeding out of British India for the purpose of driving such vehicles, and
- (ii) prescribing the conditions subject to which motor vehicles brought temporarily into British India by persons intending to make a temporary stay there may be possessed, used and driven.

(2) All rules made under this section shall be published in the Gazette of India; and, on such publication, shall have effect as if enacted in this Act.

Saving.

15. Nothing in this Act or in any rule made thereunder relating to—

- (a) the registration of motor vehicles,
- (b) requirements as to construction, identification or equipment of such vehicles, or
- (c) the licensing or qualifications of drivers of such vehicles,

shall apply in the case of any motor vehicle such as is referred to in clause (ii) of sub-section (1) of section 14, or of any person possessing, using or driving the same, provided that the requirements of any rule made under the said clause and applicable to such vehicle or person are complied with.

## PART V.

### MISCELLANEOUS.

Penalties.

16. Whoever contravenes any of the provisions of this Act or of any rule made thereunder shall, if no other penalty is elsewhere provided in this Act for such contravention, be punishable with fine which may extend to one hundred rupees, and, in the event of such person having been previously convicted of an offence under this Act or any rule made thereunder, with fine which may extend to two hundred rupees.

## NOTES.

See the cases cited in the notes to see 8 *ante* :

Where a car was driven by a chauffeur of the accused, who was the owner of the car without a proper rear light, which was not properly illuminated on the particular occasion, the owner who was not in the car cannot be convicted. Magistrates should so far as lies in their power discourage prosecution for trivial offence under this Act except when a previous warning has been ignored or when public safety has in fact been endangered.

**Mahomed Surity vrs. Emperor**, 86 Cal. 415=76, I. C. 564. But see **Thorn-ton vrs. Emperor**, 88 Cal. 415, and **Baidya Nath Bose vrs. Emperor**, 45 Cal. 480.

Cognizance of offences.

17. No Court inferior to that of a Presidency Magistrate or a Magistrate of the second class shall try any offence punishable under this Act or any rule made thereunder.

• Cancellation and suspension of licence and disqualification for obtaining licence.

18. (1) A Local Government may, in its discretions,—  
(i) cancel or suspend any licence granted under this Act, and

(ii) declare any person disqualified for obtaining a licence under this Act either permanently or for such period as it thinks fit.

(1A) *The prescribed authority may, subject to such conditions and limitations as may be prescribed, cancel or suspend any licence granted under this Act. (Added by Sec. 3, Act XXVII of 1920).*

(2) Any Court by which any person is convicted of an offence against the provisions of this Act or any rule made thereunder or of any offence in connection with the driving of a motor vehicle shall, if such person holds a licence under the Act, cause particulars of the conviction to be endorsed thereon and may, in respect of such person and of his licence, if any, exercise the like powers as are conferred by sub-section (1) on the Local Government:

Provided that no order made by a Court under this sub-section shall affect any person or licence for a period exceeding one year from the date of such conviction.

(3) Any Court before which the holder of a licence under this Act is accused of any offence mentioned in sub-section (2) may suspend such licence until the termination of the proceedings before it.

(4) A copy of every order of cancellation, suspension or disqualification made under this section in respect of a licence or the holder of a licence shall be endorsed on the licence, and a copy of every endorsement, in accordance with the provisions of this section, shall be sent to the authority by which such licence has been granted.

(5) Every holder of a licence shall, when called upon to do so, produce his licence before any authority acting under this section.

(6) A person whose licence has been cancelled or suspended in accordance with the provisions of this section, shall, during the period for which such order of cancellation has effect, or during the period of suspension, as the case may be, be disqualified for obtaining a licence.

(7) No person whose licence has been endorsed or who has been disqualified for obtaining a licence shall apply for, or obtain, a licence without giving particulars of such endorsement or disqualification.

### NOTES.

The best way of stopping reckless driving of motor cars is for the Court to exercise its power under sec. 18 (2) of the Motor Vehicles Act, under which the Court will cause particulars of the conviction to be endorsed on the licence held by the driver and may cancel or suspend the licence. **Emperor vrs. Basappa**, 90 I. C. 820=1925 Bom. 526 (A. I. R.)

The order of suspension is as much a part of the sentence as an order under sec. 565 Cr. P. C. and on appeal the appellate Court can interfere with the order of suspension and not merely with the fine imposed. *Dekhla Kumbi vs. Emperor*, 65 I. C. 425 = 1922, Nag. 71.

**Repeals.** 19. The enactments mentioned in the Schedule are repealed to the extent specified in the fourth column thereof:

Provided that any appointment, notification, order, rule, form or licence made or issued under any of the said Acts, shall, so far as it is not inconsistent with the provisions of this Act, continue in force and be deemed to have been issued under the provisions of this Act, unless and until it is superseded by any appointment, notification, order, rule, form or licence made or issued under this Act.

**SCHEDULE.**

(See section 19)

**ENACTMENTS REPEALED.**

Year	No.	SHORT TITLE.	Extent of repeal.
1912	XII	I.—Act of the Governor-General in Council. The Motor Vehicles International Circulation Act, 1912.	The whole
1907	I	II.—Madras Act. The Madras Motor Vehicles Act, 1907.	The whole
1904	II	III.—Bombay Act. The Bombay Motor Vehicles Act, 1904.	The whole
1903	III	IV.—Bengal Act. The Bengal Motor Car and Cycle Act, 1903.	The whole
1911	II	V.—United Provinces Act. The United Provinces Motor Vehicles Act, 1911.	The whole
1907	II	VI.—Punjab Act. The Punjab Motor Vehicles Act, 1907.	The whole
1906	II	VII.—Burma Act. The Burma Motor Vehicles Act, 1906.	The whole

## BIHAR AND ORISSA ACT II OF 1920.

### The Bihar and Orissa Places of Pilgrimage Act, 1920.

*(The assent of the Governor-General to this Act was published in the " Bihar and Orissa Gazette " of the 31st March, 1920).*

### AN ACT TO MAKE BETTER PROVISION FOR THE CONTROL AND SANITATION OF PLACES OF PILGRIMAGE AND FOR THE REGULATION OF HOUSES THEREIN IN WHICH PILGRIMS ARE ACCOMMODATED.

WHEREAS it is expedient to make better provision for the control and sanitation of places of pilgrimage, and for the regulation of houses therein in which pilgrims are accommodated ;

And Whereas the previous sanction of the Governor-General has been obtained under section 79 (2) of the Government of India Act, 1915, to the passing of this Act ;

It is hereby enacted as follows :—

#### PRELIMINARY.

Short title and extent. 1. (1) This Act may be called the Bihar and Orissa Places of Pilgrimage Act, 1920.

(2) This section extends to the whole of the Province of Bihar and Orissa, including the Santal Parganas.

(3) The Local Government may by notification extend all or any of the other provisions of this Act to any local area to or through which people go on pilgrimage.

Definitions. 2. In this Act, unless there is something repugnant in the subject or context,—

(1) " licensed house " means a house in respect of which a licence for the accommodation of pilgrims has been granted under this Act and is in force ;

(2) " Magistrate " means the District Magistrate, and includes any Magistrate of the first class specially empowered by the Local Government to perform the functions of the Magistrate under this Act ;

(3) " owner " means the person entitled to the immediate possession of any house, and includes the person who has obtained a licence in respect of any house ;

(4) " pilgrim " includes a person who visits a place of pilgrimage with the object, among others, of performing such rites as are usually performed by pilgrims ;

(5) " prescribed " means prescribed by rules made by the Local Government under this Act.

#### LICENSED HOUSES.

Prohibition of accommodation of pilgrims for gain in unlicensed houses.

3. No person shall accommodate pilgrims for gain in any house not licensed.

Application for licence.

4. (1) The owner of any house may apply to the Magistrate to license such house for the accommodation of pilgrims.

(2) Every such application shall be in writing in the prescribed form, and shall be accompanied by the prescribed fee for inspection of the house by the Medical Officer of Health.

Reference to Medical Officer of Health.

5. The Magistrate shall forward the application to the Medical Officer of Health, who shall inspect the house and return the application to the Magistrate with a certificate in the prescribed form of the result of his inspection.

Grant of license.

6. (1) If it appears to the Magistrate after considering the certificate of the Medical Officer of Health that the house satisfies the prescribed requirements he may, on payment of the prescribed licence-fee, license the house for the accommodation of such number of pilgrims, if any, as in his opinion the house is fit to accommodate, having regard to the number of persons stated in the application to be resident in the house as members of the family and servants of the owner, or if the Magistrate considers that the number of persons so stated has been overstated or understated, to the number of persons likely in his opinion to be so resident at the time when the largest number of pilgrims is accommodated in the house.

(2) Every such licence shall be in the prescribed form and subject to the prescribed conditions, and shall specify the date, not exceeding one year from the date of issue, up to which it is to remain in force.

Discretion to grant temporary or provisional licence.

7. The Magistrate may license any house for a period not exceeding one month at a reduced fee, and may also, in cases of urgency, if satisfied that sufficient accommodation cannot otherwise be provided for all the pilgrims visiting the town or place, provisionally license any house pending the result of the inspection of the Medical Officer of Health.

Revocation or suspension of licence.

8. If the Magistrate is satisfied that any licensed house is unfit for the accommodation of pilgrims, or if the owner of any licensed house is convicted of any offence punishable under this Act, the Magistrate may revoke or suspend the licence granted in respect of such house.

Modification of licence.

9. Whenever the Magistrate is satisfied that any licensed house is fit for the accommodation of a less number only of pilgrims than the number entered in the licence, the Magistrate may modify such licence by entering therein such less number:

Provided that if the change is not due to the fault of the licensee, the Magistrate shall refund to him such portion of the license-fee already paid as he deems just and reasonable in the circumstances of the case.

Powers of entry and inspection.

10. (1) The Magistrate or the Medical Officer of Health may at any time—

(a) enter and inspect any licensed house or any part thereof other than a *senana* room;

- (b) after giving the prescribed notice of his intention to do so, enter and inspect any *senana* room in the licensed house.

Explanation.—The expression “ *senana* room ” means any part of a house in the exclusive use and occupation of women who according to the custom and manners of the country ought not to be compelled to appear in public.

(2) The Magistrate may by order in writing—

(a) authorize any officer not below the rank of a Sub-deputy Magistrate or Sub-deputy Collector to exercise the above powers;

(b) authorize any other person to exercise the above powers between the hours of 6 a.m. and 9 p.m.

(8) Every person so authorized shall be deemed to be a public servant with the meaning of the Indian Penal Code.

Power to exempt licensed house from inspection.

11. The Magistrate may by order exempt any licensed house or any part thereof from inspection for a period specified in the order, and may cancel or renew any such order.

#### MEDICAL OFFICERS OF HEALTH.

Power to appoint Medical Officers of Health and sanction establishment.

12. The Commissioner may—

(a) appoint Medical Officers of Health to carry out the purposes of this Act;

(b) sanction the entertainment of such establishment as he may deem necessary for the purposes of this Act.

#### TERMINAL TAX ON PASSENGERS.

Power to impose terminal tax.

13. The Local Government may impose a terminal tax on passengers of one or more of the following classes, namely:—

- (a) passengers brought by railway to any railway station;
- (b) passengers taken by railway from any railway station;
- (c) passengers brought by steam vessel to any landing place;
- (d) passengers taken by steam vessel from any landing place; in or near a place of pilgrimage:

Provided that no terminal tax shall be imposed on passengers of class (a) or class (b) without the sanction of the Governor-General in Council.

#### PENALTIES.

Penalty for accommodating pilgrims in house not licensed.

14. If any pilgrim is accommodated for gain in a house other than a licensed house, the owner of the house shall be liable for every pilgrim so accommodated to a fine not exceeding rupees five for every day or night during any part of which such pilgrim was accommodated in the house.



**Penalty for accommodating persons in house after revocation or suspension of licence.**

owner shall be liable to a fine not exceeding Rs. 5 for each such person so found.

15. When a licence in respect of a house has been revoked or suspended, if there is resident in such house any person other than a member of the family or a servant in the actual employ of the owner, the owner shall be liable to a fine not exceeding Rs. 5 for each such person so found.

**Penalty for accommodating excess number.**

fine not exceeding five rupees for each person so found in excess.

16. If there is at any time resident in a licensed house a number of persons in excess of the authorized number, the owner of the house shall be liable to a fine not exceeding five rupees for each person so found in excess.

**Explanation.**—In this section the expression “authorized number” means the total arrived at by adding the number of pilgrims entered in the licence, to the number of residents to which regard was had under the provisions of sub-section (1) of section 6.

**Penalty for contravention of conditions of licence.**

and the rules made thereunder, the owner of the house shall be liable to a fine not exceeding Rs. 20.

17. If the conditions entered on a license granted in respect of a licensed house are contravened in any manner for which no penalty is provided by this Act

**Liability of person in charge of licensed house in absence of owner.**

for any offence in respect of such house.

18. If the owner of a licensed house is absent therefrom, leaving it in charge of any other person, then such other person as well as the owner shall be liable to any penalty which may under this Act be imposed

**Power to perform work of which notice is given.**

eight days after being served with a notice in that behalf, the Magistrate may cause such work to be performed and may recover the cost from such person as if it were a fine :

19. Where any person is required to perform any work of or connected with conservancy or sanitation, and such person fails to perform such work within

Provided that in case of urgency where immediate remedy is in the opinion of the Magistrate essentially necessary, he may cause such work to be performed at any time after the issue of the notice, and may recover the cost as aforesaid :

Provided that this section shall not apply to an area which is a municipality within the meaning of the Bengal Municipal Act, 1884.

#### THE LODGING-HOUSE FUND.

**The Lodging-house Fund.**

credit thereof in the District Treasury or in a Sub-Treasury,—

20. (1) In every area to which this Act applies, there shall be constituted a fund, to be called the “Lodging-house Fund,” and there shall be placed to the

(a) all sums levied and recovered within such area as fees, fines, penalties or otherwise under this Act;

(b) all sums which may be allotted to the Fund from provincial revenues by the Local Government, or directed by the Local Government to be credited to the Fund; and

- (c) the net proceeds of the terminal tax, if any, imposed under section 18.

(2) The Local Government may appoint any person or a committee to administer in accordance with the provisions of this Act, the Lodging-house Fund constituted for any area :

Provided that in any area where the Bengal Municipal Act 1884, is in force, the fund shall be administered by a committee, at least one-third of whose number shall be elected by the Commissioners of the municipality for that area and the remainder shall be elected or nominated in such manner as the Local Government may prescribe.

Application of fund. 21. The Lodging-house Fund shall be applied as the Commissioner may direct—

- (a) to the payment of the salaries of Medical Officers of Health appointed and of establishment entertained in accordance with the provisions of section 12, and of pensions and gratuities, and of contributions to the provident or annuity fund ;
- (b) to the provision of medical relief in the area for which the fund is constituted, and to the sanitary improvement and conservancy of the said area and of any place, building or road which is or may be regulated by rules made under this Act.

### MISCELLANEOUS.

Suits against officers. 22. (1) For the purposes of section 80 of the Code of Civil Procedure, 1908, the Magistrate, the Medical Officer of Health and every person acting under his or their direction shall be deemed to be a public officer.

(2) A suit or proceeding against any such person for anything done or professing or purporting to be done under this Act shall not be instituted after three months from the date of accrual of the cause of action.

Power to make rules. 23. (1) The Local Government may after previous publication make rules for carrying out the purposes of this Act :

Provided that without the previous sanction of the Government of India no railway company or administration shall by such rules be called upon to collect a terminal tax.

(2) In particular and without prejudice to the generality of the foregoing power, the Local Government may by such rules—

- (a) provide for every matter by this Act directed or expressly or impliedly authorized to be prescribed :
- (b) prescribe the authority which may require a person to perform a work of or connected with conservancy or sanitation, or to perform such a work of any specified class ;

- (c) prescribe the manner of service of any notice or order under this Act or any rule made thereunder;
  - (d) subject to the proviso to sub-section (1), prescribe the manner in which the terminal tax shall be collected;
  - (e) prescribe registers, forms and returns;
  - (f) provide for the grant of pensions and gratuities to the Medical Officer of Health and to the members of the establishment entertained under section 12;
  - (g) provide for the creation and management of a provident fund or annuity fund, for compelling contributions thereto on the part of members of the said establishment and for supplementing such contributions out of the Lodging-house Fund;
  - (h) regulate the encampments, lodging and halting-places, *sarais* and *dharmshalas* used by pilgrims in any place of pilgrimage, or on their journey thereto or therefrom.
  - (i) prescribe measures to be taken for preventing the outbreak or spread of any epidemic disease;
  - (j) in any area not being a municipality or part of a municipality, provide for all or any matters of or connected with conservancy, sanitation and medical relief.
- (8) The Local Government may in making any rule under this section direct that the breach thereof shall be punishable with fine not exceeding fifty rupees and in case of a continuing offence, a further fine not exceeding twenty rupees for each day after written notice of the offence from the Magistrate.

#### REPEALS.

- Rupees.      24. The enactments specified in the schedule, so far as they are in force in Bihar and Orissa, are hereby repealed.

#### THE SCHEDULE.

Enactments Repealed.

(See section 24)

Acts of the Lieutenant-Governor of Bengal.

Year.	No.	SHORT TITLE.
I.	2.	3.
1871	IV	The Puri Lodging-house Act.
1879	II	The Puri Lodging-house (Extension) Act.
1884	I	The Puri Lodging-house (Extension) Act.
1908	III	The Puri Lodging-house (Amendment) Act.

*The 25th August, 1923.*

No. 489 L. S. G.—In exercise of the power conferred by section 28 (1) of the Bihar and Orissa Places of Pilgrimage Act, 1920, the Government of Bihar and Orissa in the Ministry of Local Self-Government are pleased to make the following rules under sections 4, 5 and 6 of the said Act:—

**RULES UNDER THE BIHAR AND ORISSA  
PLACES OF PILGRIMAGE ACT, 1920.**

**Rules under sections 4, 5 and 6.**

1. (i) Application for the grant of a licence for the accommodation of pilgrims shall be filed at least 20 days before the date fixed for the principal festival, which will be notified by the Magistrate in due time every year. Licence will ordinarily be granted for the period ending on the 31st December of the year in which they are granted.

(ii) The application shall be in Form A appended to these rules.

2. An inspection fee of rupee one shall be deposited in cash at the time of presenting the application. When the application is for licensing more than one house a separate fee for each house shall be payable.

3. If the Magistrate decides to license a house for which application has been made, he shall inform the applicant and shall require him to deposit in cash a license fee calculated on the total number of pilgrims for which the house is to be licensed at the rates specified in the Schedule attached to these rules:

Provided that an additional fee, the amount of which shall be fixed by the Magistrate but which shall not exceed 50 per cent. of the ordinary fee shall be payable if application is made between the 20th and the 10th day previous to the date fixed for a principal festival;

Provided also that the Magistrate may permit the applicant to pay the licence fee in such instalments as the Magistrate shall prescribe;

Provided further that when the Magistrate permits payment by instalments, the applicant shall give security to the satisfaction of the Magistrate for the payment of the balance.

The Magistrate shall not entertain an application for the grant of a licence presented after the 10th day previous to the date of principal festival, unless he considers the grant or renewal of the licence necessary in view of the large number of pilgrims.

4. The certificate embodying the result of inspection of a house under section 5 of the Act shall be in form B appended to these rules.

5. The licence shall be in form C appended to these rules.

6. No house shall be licensed unless the buildings are designed so as to comply with the following conditions:—

(a) *Air space and ventilation.*—

(i) For each lodger excluding children under three years of age the superficial area and air space shall ordinarily be not less than 24 square feet and 240 cubic feet respectively.

(ii) Each room shall be provided with barred apertures, exclusive of the doorway, of a total area not less than one-tenth of the floor area. Wherever possible thorough ventilation must be provided.

Where such ventilation is not possible the superficial area and air space for each lodger shall be increased, as the Magistrate deems fit.

- (iii) The height of no room or verandah shall be less than  $7\frac{1}{2}$  feet in the case of houses now in existence or less than 9 feet in case of houses to be erected hereafter.
- (iv) In special cases, the above conditions may be relaxed by the Magistrate provided that the superficial area and air space for each lodger shall not be reduced below 18 square feet and 180 cubic feet respectively.

(b) *Light.*—

If in the opinion of the Magistrate the lighting is defective, the apertures prescribed by Rule 6 (a) (ii) shall be increased by not more than 50 per cents.

(c) *Latrine and urinal.*—

- (i) Separate latrine and urinal accommodation for males and females shall be provided.
- (ii) There shall be at least two latrines and one urinal for males and three latrines and one urinal for females for each hundred lodgers.
- (iii) There shall be a clear space of 3 square feet for each seat.
- (iv) The seat, the space below it and the walls to a height of 2 feet above it, shall be built of non-absorbent material.
- (v) The floor of the space below the seat shall be at least 6 inches above the ground level.
- (vi) The seats shall be so constructed that liquids and solids fall into separate pans or buckets which shall fit close under the seats, shall not leak and shall have an easily cleansed surface.
- (vii) Latrines and urinals shall be easily accessible from outside for cleaning.
- (viii) They shall be well lighted and ventilated, having for this purpose at least one aperture of 2 square feet opening directly to the external air.
- (ix) They shall be properly screened off when in use.

(d) *Water supply.*—

- (i) If in the opinion of the Magistrate a water supply connection is feasible, the owner of a licensed house may be required to have it laid on to the house.
- (ii) Where a water connection has been made, all wells may be closed at the discretion of the Magistrate.
- (iii) All wells shall comply with the following conditions :—
  - (1) They must be built of solid masonry down to water level.
  - (2) They must have a parapet wall at least  $2\frac{1}{2}$  feet high round the well mouth and outside of this a protecting platform all round, at least 4 feet wide and provided with a masonry drain to carry off all spilled water from the proximity of the well.

(8) They must in no case be nearer than 25 feet from a latrine, urinal, cesspool or other receptacle for filth or rubbish.

(iv) Each well should be covered in and provided with a semi-rotatory or other suitable type of pump or upright pulley rope and bucket.

**(e) Drainage.—**

In licensed houses which have water flush latrine and urinals connected with sewers, the drains must be underground; in all other cases they shall be on the surface so that they can be readily flushed and cleaned, and in no case shall they pass under the floors of the rooms. The drains shall be constructed of glazed earthenware half pipes laid in cement, or any other material which will give a smooth, even, non-absorbent surface. The drains shall discharge into the street surface drains if these have been constructed to receive sullage, otherwise into a cesspool made of some impervious material and so situated that it can be easily emptied from outside the house.

**(f) Bathing accommodation.—**

Each licensed house accommodating more than 20 lodgers shall have such bathing accommodation as the Magistrate deems fit. If bathing accommodation is ordered, the floor must be laid in concrete or flags and must be connected by a masonry surface drain with the general drainage of the premises.

7. The owner, or in his absence the person in charge of any licensed house, shall—

- (i) keep one sweeper for every hundred pilgrims;
- (ii) provide open kerosine tins, tarred within and without, at the rate of one for every ten pilgrims, for the collection of rubbish and refuse;
- (iii) cause the living rooms, verandahs and court-yards to be swept and cleaned daily and the collections of rubbish and refuse to be removed;
- (iv) cause all wells attached to the licensed house to be thoroughly cleaned once a year and, except in the case of covered wells fitted with pump, shall have all wells disinfected at such times and in such manner as the Magistrate shall prescribe;
- (v) cause all latrines, urinals, drains, cesspools and receptacles for rubbish to be cleaned daily;
- (vi) display on a conspicuous part of the main entrance of the house a ticket showing in red letters not less than six inches in height—
  - (a) the registered number of licence;
  - (b) the number of pilgrims which the house is licensed to accommodate;
  - (c) the period during which the licence is in force.
- (vii) display in conspicuous place on the lintel of each room or on the posts of each verandah licensed for the accommodation of pilgrims a ticket showing the number of pilgrims for which it is licensed;
- (viii) report immediately to the nearest police-station all cases of serious illness and all deaths occurring in the licensed house. In-

formation shall be sent immediately by the officer in charge of the police-station to the Medical Officer of Health;

- (ix) afford assistance to the Medical Officer of Health or his assistant in removing the sick persons, if necessary, to hospital and in getting the house disinfected.

*[See the conditions of a licence granted under these Rules; these conditions are entered therein.]*

8. The Magistrate or the Medical Officer of Health may cause to be destroyed or disinfected all infected clothing, bedding or other articles in a licensed house and may cause to be disinfected any licensed house.

9. Upon the inspection and examination of any licensed house, the Magistrate or Medical Officer of Health or other person authorized to make such inspection and examination shall record a succinct report of the result of the result of such inspection and examination in the following form:—

- (1) Date of inspection.
- (2) Number of licensed house.
- (3) Name of keeper.
- (4) Name and designation of Inspecting Officer.
- (5) Result of inspection.
- (6) Order by the Magistrate or Medical Officer of Health.

10. The Magistrate may exempt any licensed house for reasons to be recorded in writing from the operation of any of these rules.

#### ADDITIONAL RULES FOR NON-MUNICIPAL AREAS.

*[Section 23 (2) (i)].*

1. No person shall carry night-soil or other offensive matter otherwise than in a closed receptacle.

Penalty Rs. 10.

2. No person shall dispose of or cause to be disposed of any corpse otherwise than by burning or burying it at or in some burning or burial ground specially set apart for the purpose by the Magistrate.

Penalty Rs. 10.

3. No person shall bathe or wash clothes or vessels on the parapet of any public well, or in any other way defile the water of such well.

Penalty Rs. 10.

4. No pilgrim shall camp, sleep or cook his food in the open air except on private premises or at such public camping grounds as may be notified by the Magistrate.

Penalty Rs. 10.

5. The Health Officer or Civil Surgeon may at any time enter into and inspect any market, building, shop, stall or places used for the sale or storage of articles intended for food, and may examine any such article which may be therein. If upon examination any such article appears to be unfit for food, he may seize the same. Upon the seizure of any such article of food as aforesaid, the same may, if the owner or the person in whose pos-

session it is found consents, be forthwith destroyed or so disposed of as to prevent its being used as food, but if the owner or possessor as aforesaid do not consent, it shall be taken at once before the nearest Magistrate or before such other Magistrate as the District Magistrate may, by a general or special order in writing, direct. If it appears to such Magistrate before whom the article is produced that the same is unfit for food he shall order the same to be destroyed or so disposed of as to prevent its being used as food, and he may further impose a penalty not exceeding Rs. 20 upon the owner or possessor of such article, such person not being merely a carrier or bailee thereof.

(See facing page for FORM A.)

FORM B.

(Section 5 of the Bihar and Orissa Places of Pilgrimage Act, II of 1920.)

[Rule 4.]

I do hereby certify that I have inspected the house mentioned in the application forwarded by you with letter No.....dated the.....  
memo.

The result of my inspection is detailed below:—

- (1) Air space and ventilation.
- (2) Number of pilgrims who may be accommodated (a) in whole house, (b) in each room or verandah.
- (3) Lighting.
- (4) Latrines and urinals.
- (5) Water-supply.
- (6) Drainage.
- (7) Bathing accommodation.
- (8) General remarks.

Signature.....

Dated the.....192 .

Medical Officer of Health.

FORM C.

LICENCE.

[Rule 5.]

A. B.....the owner of house No.....in the town of.....  
village is hereby licensed to received pilgrims in his said house in.....apartments thereof, subject to the provisions of the Bihar and Orissa Places of Pilgrimage Act, II of 1920, the rules thereunder issued from time to time by Government in the Ministry of Local Self-Government and the following conditions.

• The registered number of this licence, upon which a fee of Rs..... has been paid, is No.....

Dated the.....192 .

Signature.....

Magistrate of , District.



**FORM A.**  
**APPLICATION FOR LICENCE.**

**[RULE I (ii)]**

I....., the owner of house....., in the town of ....., hereby request that a Licence may be granted to me under the provisions of Bihar and Orissa Places of Pilgrimage Act, II of 1920, for the reception of pilgrims in my said house.

Name of the street in which the house is situated, or other sufficient description of its locality.	Name of person applying for licence.	Whether soleowner of house or not.	Whether applicant has been previously convicted of any offence against the provisions of this Act.	Number of lodgers applicant desires to accommodate in his said house.	Number, description and size of apartments in which applicant desires to accommodate lodgers.	Number of inmates now residing in applicant's said house.
1	2	3	4	5	6	7

I....., above-named, do declare that what is stated in the above application for a licence is true to the best of my information and belief.

Signature.....

## CONDITIONS.

(1) The licence shall be produced to the Magistrate, the Medical Officer of Health or any other persons authorized to enter and inspect under section 10 of the Act.

(2) The licence is granted subject to the conditions prescribed in rule 7 which is as follows:—

The owner, or in his absence the person in charge of any licenced house, shall—

- (i) keep one sweeper for every hundred pilgrims;
- (ii) provide open kerosine tins, tarred within and without at the rate of one for every ten pilgrims, for the collection of rubbish and refuse;
- (iii) cause the living rooms, verandahs and court-yards to be swept and cleaned daily and the collections of rubbish and refuse to be removed;
- (iv) cause all wells attached to the licensed house to be thoroughly cleaned once a year and, except in the case of covered wells fitted with a pump, shall have all wells disinfected at such times and in such manner as the Magistrate shall prescribe;
- (v) cause all latrines, urinals, drains, cesspools and receptacles for rubbish to be cleaned daily;
- (vi) display on a conspicuous part of the main entrance of the house a ticket showing in red letters not less than six inches in height—
  - (a) the registered number of the licence;
  - (b) the number of pilgrims which the house is licensed to accommodate;
  - (c) the period during which the licence is in force;
- (vii) display in a conspicuous place on the lintel of each room or on the posts of each verandah licensed for the accommodation of pilgrims a ticket showing the number of pilgrims for which it is licensed;
- (viii) report immediately to the nearest police-station all cases of serious illness and all deaths occurring in the licenced house. Information shall be sent immediately by the officer in charge of the police-station to the Medical Officer of Health;
- (ix) afford assistance to the Medical Officer of Health or his assistants in removing the sick persons, if necessary, to hospital and in getting the house disinfected.

## THE SCHEDULE.

Rates at which the fee payable upon each licence granted for the various places under the Bihar and Orissa Places of Pilgrimage Act 1920 (Bihar and Orissa Act, II of 1920), shall be calculated :

Names of Places.	Fees.
I.—Gaya District.	
(1) Gaya town	Re. 1 for each lodger.
(2) Moranpur	} Annas 12 for each lodger.
(3) Baksu Bigha	
II.—Santal-Parganas District.	
(1) Deoghur	} Annas 8 for each lodger.
(2) Jessdih Bazar	
III.—Puri District.	
(1) Puri town	} Re. 1 for each lodger
(2) Satyabadi	
(3) Bhubaneshwar town with adjacent villages of Kapileswar and Kapilprasad.	} Annas 8 for each lodger.
(4) Bhubaneshwar Railway Station	
(5) Railway Station of Jatni together with villages Jatni, Kudiari and Nuagaon	
(6) Routrapur.	
(7) Atharanala	
(8) Khandiabundh	} Annas 2 for each lodger.
(9) Malatipatpur	
(10) All other places to which this Act has been extended.	
IV.—Balasore District.	
(1) Nayabazar, Balasore	} Annas 8 for each lodger.
(2) Turkiabazar	
(3) Bankabazar, Bhadrak	
(4) Nayabazar, Bhadrak	
(5) Chandbali	} Annas 2 for each lodger.
(6) All other places to which this Act has been extended.	
V.—Cuttack District.	
(1) Jajpur Municipality	} Annas 8 for each lodger.
(2) Barundai village	
(3) Ruriya village	
(4) Both sides of Jajpur-Kuakhai Road from Distributary No. 1 to Jokhinabazar	
(5) Both sides of Jajpur-Binjharpur Road from the limit of the Jajpur Municipality up to 1 mile towards Bhinjarpur	
(6) Mulapal	} Annas 2 for each lodger.
(7) Pattamundai (Kendrapara)	
(8) All other places to which this Act has been extended	

M. G. HALLET,  
Secretary to Government.

# THE BENGAL FERRIES ACT, 1885.

(Bengal Act I of 1885).

(27th May, 1885).

*(As applicable to the Province of Bihar and Orissa.)*

## AN ACT TO REGULATE FERRIES IN BENGAL.

WHEREAS it is expedient to regulate ferries, within the territories subject to the Lieutenant-Governor of Bengal;

It is enacted as follows:—

### Preliminary.

Preamble.

1. This Act may be called the Bengal Ferries Act, 1885.

Short title.

Extent and commencement of Act.

2. It shall extend to all the territories subject to the Lieutenant-Governor of Bengal:

And it shall come into force on such date as the Lieutenant-Governor may, by notification in the Calcutta Gazette, appoint in this behalf.

### NOTES.

Territories subject to the Lieutenant-Governor of Bengal:—

This includes the present Province of Bihar and Orissa which was a part of Bengal and under the administration of the Lieutenant-Governor of Bengal. See sec. 3 and Sch. B of Bengal, Bihar and Orissa and Assam Laws Act (Act VII of 1912 I. C.)

The Act came into force on the 1st August, 1885. Bengal Government. Notification dated the 11th June, 1885.

Regulation VI of 1819 & Bengal act I of 1866 repealed.

3. Regulation VI of 1819 and Bengal Act I of 1866 are hereby repealed; but all determinations, orders and rules made, engagements entered into and securities taken under such Regulation and Act shall be deemed to be respectively made, entered into and taken under this Act.

Act not to apply to municipal ferries.

4. Nothing in this Act contained shall apply to any ferry deemed or declared to be a municipal ferry under the provisions of the Bengal Municipal Act, 1884.

### NOTES.

The Bengal Ferries Act did not apply to Municipal Ferries by virtue of this section. Sch. II of the B. & O. Municipal Act repealed Sec. 4 and Sch. III of the Act amended, see 35 of this Act. Like ferries under the District Board, Municipal Ferries in Bihar and Orissa will henceforth be governed by the Bengal Ferries Act. See in this connection the notes to Sec. 2 (2) of the B. & O. Municipal Act.

Interpretation.

5. In this Act, unless there be something repugnant in the subject or context,—

Commissioner.

“Commissioners” means the Commissioner of a Division:

"Ferry" includes a bridge of boats, pontoons or rafts, a swing-bridge, a flying-bridge, a temporary bridge, and a landing stage:

Notification.

"Notification" means a notification published in the Calcutta Gazette:

Private ferries.

"Private ferries" includes all ferries other than those declared to be public ferries, or established as such, under section 6 of this Act.

## PART I.

### PUBLIC FERRIES.

Power to declare, establish, define and discontinue public ferries.

6. It shall be lawful for the Lieutenant-Governor from time to time to—

- (a) declare what ferries shall be deemed public ferries, and the respective districts in which, for the purpose of this Act, they shall be deemed to be situate;
- (b) take possession of a private ferry and declare it to be a public ferry;
- (c) establish new public ferries where, in his opinion, they are needed;
- (d) define the limits of any public ferry;
- (e) change the course of any public ferry; and
- (f) discontinue any public ferry which he deems unnecessary.

Every such declaration, establishment, definition, change or discontinuance shall be made by notification:

Provided that, when any alteration in the course, or in the limits of a public ferry is rendered necessary by changes in the river on which such ferry is established such alteration may be made, by an order in writing, by the Magistrate of the district.

### NOTES.

As regards the province of Bihar and Orissa "Lieutenant-Governor" will mean Governor in Council of Bihar and Orissa. See Sec. 3 and Sch. D of the Bengal, Bihar and Orissa and Assam Laws Act. Act VII of 1912 I.C.

The powers under clauses (d) and (e) of sections 6, to define the limits and to change the course of such public ferries as are under their control have been delegated to the District Magistrates. Bengal Government Notification, dated 9th May, 1889.

The powers conferred upon the Lieutenant-Governor by clauses (a), (b), (c) and (f) of section 6 have been delegated to the Commissioner of Divisions. Bengal Government Notification No. 8408 L. S. G., dated 1st December, 1904. The ferries in Cuttack have been declared to be public ferries by L. S. G. R. No. 1818, dated the 22nd June, 1927.

Control of public ferries vested in the Magistrate of the district.

7. The control of all public ferries shall be vested in the Magistrate of the district, subject to the direction of the Commissioner.

Superintendence of public ferries.

8. The immediate superintendence of every public ferry shall be vested in the Magistrate of the district in which such ferry is situated, or in such other officer as the Lieutenant-Governor may, from time to time, either by name or by official designation, appoint.

And such Magistrate or officer shall, except when the tolls at such ferry are leased, make all necessary arrangements for the supply of boats for such ferry, and for the collection of the authorised tolls leviable thereat.

Ferry tolls may be leased by auction.

9. The tolls of any public ferry may, from time to time, be leased by public auction for such terms as the Magistrate of the district in which such ferry is situated may, with the approval of the Commissioner, direct.

The Magistrate of the district or one authorised by him to conduct such auction may, for sufficient reason to be recorded in writing refuse to accept the offer of the highest bidder, and may accept any other bid, or may withdraw the tolls from auction.

Execution of contract by lessee.

The lessee of the tolls of every ferry which have been leased under this section shall execute a contract setting forth the conditions on which the tolls of such ferry are to be held, and shall give security for its due fulfilment.

### NOTES.

The Commissioner's jurisdiction under sec. 9 of the Ferries Act is apparently limited to sanctioning the term of the lease. Sheodhar Prasad vs Ram Saroop Singh. 7 P. L. T. 337.

Lessee of the tolls of a public ferry and his servants bound to conform to rules.

10. When the tolls of a public ferry have been duly leased, the lessee and every servant of the lessee shall be deemed to be legally bound to conform to the rules made under this Act for the management and control of such ferry.

Provision for the establishment of subsidiary ferry.

11. On the requisition of the Magistrate of the district the person in charge of a public ferry situate in such district shall maintain at one or more places, in addition to the place at which the said public ferry is established, and within two miles therefrom, such number of subsidiary ferries as may seem to the Magistrate to be necessary for the public convenience; and all the provisions contained in this Act in regard to the management and control of public ferries shall be deemed applicable to any subsidiary ferry maintained under the requisition of the Magistrate.

Recovery of arrears from lessee.

12. All arrears due by the lessee of the tolls of a public ferry on account of his lease; any pecuniary forfeiture for breach of contract inserted in the deed of contract or conditions of sale by public auction; and

all sums due from the lessee on the surrender of his lease under section 14,

may be recovered from the lessee or his surety (if any) as a demand under Bengal Act VII of 1880 or any other Act at the time being in force for the recovery of public demands.

### NOTES.

Any other Act would now refer to the Bihar and Orissa Public Demands Recovery Act, 1914 (Act IV of 1914).

Power to cancel lease. 13. The lease of the tolls of any public ferry shall be liable to be cancelled at once by the Magistrate of the district in which such ferry is situated, if it shall

appear to such Magistrate that the lessee has failed to make due provision

for the convenience or safety of the public within fifteen days after being required to do so by a notice in writing from such Magistrate.

14. The lessee of the tolls of a public ferry may surrender of lease. surrender his lease on the expiration of one month's notice in writing to the Magistrate of the district in which such ferry is situated of his intention to surrender such lease, and on payment of such reasonable compensation as the Magistrate may, with the approval of the Commissioner, in each case direct.

15. The Magistrate of the district, with the approval in regard to public ferries. of the Commissioner, may from time to time make rules consistent with this Act—

- (a) for the management of all public ferries within such district and for regulating the traffic at such ferries;
- (b) for regulating the time and manner at and in which the terms in which, and the person by whom, the tolls of such ferries may be leased by auction;
- (c) for compensating persons who have compounded for tolls payable for the use of any such ferry when such ferry has been discontinued before the expiration of the period compounded for; and
- (d) generally, to carry out the purposes of this Act;

And, when the tolls of a ferry have been leased under section 9, such Magistrate may, for time to time, with such approval as aforesaid make additional rules consistent with this Act,—

- (e) for collecting the rents payable for the tolls of such ferries;
- (f) for regulating the returns of traffic to be, from time to time, submitted by the lessee of such ferries;
- (g) in cases in which the communication is to be established by means of a bridge of boats, pontoons or rafts, or a swing, bridge, flying bridge or temporary bridge, for regulating the time and manner at and in which such bridge shall be constructed and maintained and opened for the passage of vessels and rafts through the same, and
- (h) in cases in which the traffic is conveyed in boats, for regulating—  
the number and kinds of such boats and their dimensions and their dimensions and equipment;  
the number of the crew to be kept by the lessee for each boat;  
the maintenance of such boats in good condition; the hours during which, and the intervals within which the lessee shall be bound to ply; and  
the number of passengers, animals and vehicles, and the bulk and weight of other things that may be carried in each kind of boat at one trip;

and may, from time to time, with such approval as aforesaid, repeal or alter such rules.

Rules made under this section shall be subject to the control of the Lieutenant-Governor and shall be published in the Calcutta Gazette in such manner as the Lieutenant-Governor directs, and shall thereupon have the force of law,

NOTES.

In the province of Bihar and Orissa, Lieutenant-Governor means Governor in Council of Bihar and Orissa. See sec. 8 and Sch. D of the Bengal, Bihar and Orissa and Assam Laws Act, 1912 (Act VII of 1912 I.C.)

16. No person shall, except with the sanction of the Magistrate of the district, maintain a ferry to or from any point within a distance of two miles from the limits of a public ferry:

Private ferry not to ply within two miles of public ferry without sanction.

Provided that, in the case of any specified public ferry, the Lieutenant-Governor may, by notification, reduce or increase the said distance of two miles to such extent as he thinks fit:

Provided also that nothing hereinbefore contained shall prevent persons keeping boats to ply between two places, one of which is without, and one within, the said limits, when the distance between such places is not less than three miles, or shall apply to boats which the Magistrate of the district expressly exempts from the operation of the section.

NOTES.

In order to constitute a ferry such as is contemplated by the Ferries Act it is necessary that there should be two points on both sides of the river so that passengers and property may be conveyed from one side of the river to the other. It must be connected on both sides with lands on the banks of the river. Section 16 only makes the maintaining of a ferry within the prohibited area an unauthorised act, but does not make such an act penal. Section 28 is the penal provision. Jeobaran Singh *vs.* Ramkishan Lal. 7 P. L. T. 734.

Claims for compensation and what amounts to be awarded.

17. Claims for compensation for any loss sustained by any person in consequence of a private ferry being taken possession of, or a new public ferry, or subsidiary ferry, being established under section 6 or section 11, shall be inquired into by the Magistrate of the district in which such ferry is situated, who shall, with the approval of the Commissioner, award compensation to any person who may appear justly entitled thereto.

Such compensation shall be calculated upon an estimate of the annual net profit actually realized by such person from such ferry on an average of the five years next preceding such declaration, and shall in no case exceed the amount of fifteen times such net annual profit.

Tolls.

18. Tolls, according to such rates as may, from time to time, be fixed by the Magistrate of the district with the approval of the Commissioner, shall be levied on all persons, animals, vehicles and other things crossing any river by a public ferry and not employed or transmitted on the public service;

Provided that the Lieutenant-Governor may, from time to time declare that any person, animals, vehicles or other things shall be exempt from payment of such tolls.

Where the tolls of a ferry have been leased under section 9, any such declaration, if made after the date of the auction, shall entitle the lessee to such abatement of the rent payable in respect of the tolls as may be fixed by the Magistrate of the district under this section.



**Table of tolls.** 19. The lessee or other person authorized to collect the tolls of any public ferry shall affix a table of such tolls, legibly written or printed in the vernacular language, and also, if the Commissioner so directs, in English, in some conspicuous place near the ferry:

**List of tolls.**

and shall be bound to produce on demand, a list of the tolls signed by the Magistrate of the district or such other officer as he appoints in this behalf.

**Tolls, rents, compensation and fines how to be appropriated.**

20. Except as provided by section 85, all tolls, rents and compensation received by or on behalf of the Government, and all fines levied under this Act, shall be appropriated in the first instance towards the payment of all charges incurred in carrying out the provisions of this Act, and the surplus, if any, shall be credited to such fund as the Lieutenant-Governor may from time to time, direct.

**Compounding for tolls.**

21. It shall be lawful for the Magistrate of the district in which a public ferry is situated, with the approval of the Commissioner, from time to time to fix rates at which any person may compound for the tolls payable for the use of such ferry.

## PART II.

### PRIVATE FERRIES.

**Power to make rules in regard to private ferries.**

22. The Commissioner may from time to time make rules consistent with this Act, for the maintenance of order, and for the safety of passengers and property, at private ferries situated in his division.

Rules made under this section shall be subject to the control of the Lieutenant-Governor, and shall be published in the Calcutta Gazette in such manner as the Lieutenant-Governor directs, and shall thereupon have the force of law.

## NOTES.

As regards the Province of Bihar and Orissa "Lieutenant-Governor" means the "Governor in Council" of Bihar and Orissa and *Calcutta Gazette* means the *Bihar and Orissa Gazette*. See sec. 3 and Sch. D of Bengal, Bihar and Orissa and Assam Laws. Act VII of 1912 I. C.

## PART III.

### PENALTIES AND CRIMINAL PROCEDURE.

**Penalty for breach of provisions as to table of tolls, list of tolls and return of traffic.**

23. Every lessee or other person authorized to collect the tolls of a public ferry, who neglects to affix and keep in good order and repair the table of tolls mentioned in section 19,

or who wilfully removes, alters or defaces such table, or allows it to become illegible,

or who fails to produce on demand the list of the tolls mentioned in section 19,

and every lessee who neglects to furnish any return required under section 15,

shall be punished with fine which may extend to fifty rupees.

\* Penalty for taking of unauthorized tolls, and for causing delay.

Penalty for breach of rules made under sections 15 and 22.

Cancellation of lease on default or breach of rules.

an offence under section 23 or section 24, is again convicted of an offence under either of those sections, the Magistrate of the district may,.....cancel the lease of the tolls of such ferry, and make other arrangements for its management during the whole or any part of the term for which the tolls were leased.

24. Every such lessee or other person as aforesaid asking or taking more than the lawful toll, or without due cause delaying any person, animal, vehicle or other thing, shall be punished with fine which may extend to one hundred rupees.

25. Every person breaking any rule made under section 15 or section 22 shall be punished with imprisonment for a term which may extend to three months, or with fine which may extend to two hundred rupees, or with both.

26. When any lessee of the tolls of a public ferry makes default in the payment of the rent payable in respect of such tolls, or has been convicted of an offence under section 25, or having been convicted of an offence under section 23 or section 24, is again convicted of an offence under either of those sections, the Magistrate of the district may,.....cancel the lease of the tolls of such ferry, and make other arrangements for its management during the whole or any part of the term for which the tolls were leased.

#### NOTES.

The words " with the approval of the Commissioners " in the section at the place marked with asterisks were repealed by sec. 2 of the Bihar and Orissa Ferries (Amendment) Act 1914 (B. & O. Act II of 1914).

Penalties on passengers offending.

27. Every person crossing by any public ferry who refuses to pay the proper toll, and every person—who, with intent to avoid payment of such toll, fraudulently or forcibly crosses by any such ferry without

paying the toll, or

who obstructs any toll-collector, or lessee of the tolls of a public ferry, or any of his assistants, in any way in the execution of their duty under this Act, or

or who, after being warned by any such toll-collector, lessee or assistant not to do so, goes or takes any animals, vehicles or other things, into any ferry boat, or upon any bridge at such a ferry, which is in such a state or so loaded as to endanger human life or property, or

who refuses or neglects to leave, or remove any animals, vehicles or goods from any such ferry-boat or bridge on being requested by such toll-collector, lessee or assistant to do so, or

who moors any boat, raft or other substance to, or in any way obstructs, any part of a public ferry, shall be punished with fine which may extend to fifty rupees.

Penalty for plying within public ferry course without licence.

28. Whoever conveys for hire any passenger, animal, vehicle or other thing in contravention of the provisions of section 16 shall be punished with fine which may extend to fifty rupees.

#### NOTES.

See Jeobaran Singh and others *vs.* Ramkishan Lal, 7 P. L. T. 784.

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Fines payable to

29. Where the tolls of any public ferry have been leased under the provisions hereinbefore contained, the whole or any portion of any fine realized under

section 27 or section 28 may, notwithstanding anything contained in section 21, be, at the discretion of the convicting Magistrate or Bench of Magistrates, paid to the lessee.

Penalty for rash navigation and stacking of timber.

80. Whoever navigates, anchors, moors or fastens any vessel or raft, or stacks any timber, in a manner so rash or negligent as to damage a public ferry, shall be punished with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both; and the toll-collector or lessee of the tolls of such ferry, or any of his assistants, may seize and detain such vessel, raft or timber pending the inquiry and assessment hereinafter mentioned.

Power to arrest without warrant.

31. The police may arrest without warrant any person committing an offence against section 27 or section 30.

32. Every Magistrate or Bench of Magistrates trying any offence under this Act may inquire into and assess the value of the damage (if any) done or caused by the offender to the ferry concerned, and shall order the amount of such value to be paid by him in addition to any fine imposed upon him under this Act; and the amount so ordered to be paid shall be leviable as if it were a fine, or when the offence is one under section 30 by the sale of the vessel, raft or timber causing the damage, and of anything found in or upon such vessel or raft.

The Commissioner may, on the appeal of any person deeming himself aggrieved by an order under this section, reduce or remit the amount payable under such order.

## PART IV.

### MISCELLANEOUS.

Power to take possession of boats and other appliances on surrender or cancellation of lease.

33. On the cancelment or surrender of a lease, the Magistrate of the district may take possession of all boats and other appliances which have been used by the lessee in the working of the ferry; and may either retain the same permanently on payment of a fair price to the proprietor, or may retain them for such time as may be necessary, not exceeding three months, until he can make arrangements for such other boats and appliances as may be necessary, in which case the Magistrate of the district shall pay a fair sum to the owners for the use of the said boats and appliances:

Provided that, within a week of taking such possession, the Magistrate of the district shall be bound to give notice to the said lessee of his intention to retain the said boats and appliances permanently, or for a period to be specified in the notice.

Similar power in cases of emergency.

34. When any boats or their equipments, or any materials or appliances suitable for setting up a ferry, are emergently required for facilitating the transport of officers or troops of Her Majesty on duty, or of any other persons on the business of Her Majesty, or of any animals, vehicles or baggage belonging to such officers, troops or persons, or of any property of Her Majesty, the Magistrate of the district may take possession of and use

the same (paying such compensation for the use thereof as the Lieutenant-Governor may in each case direct) until such transport is completed.

35. It shall be lawful for the Lieutenant-Governor to order that any public ferry situated in any district in which a District Board has been established under the provisions of the Bengal Local Self-Government Act of 1885 [or situated, within or adjacent to the limits of any Municipality, shall be managed by such District Board or by the Commissioners of such Municipality as the case may be] and such District Board shall have all the powers vested in the Magistrate of the district under this Act except the powers specified in sections 7, 17 and 32, and the Lieutenant-Governor may further order that all or any part of the proceeds of such ferry, and all or any part of the fines levied, and compensation received, under this Act in respect thereof, be paid into the District or Municipal Fund as the case may be.

And thereupon such ferry shall be managed, and such proceeds, fines and compensations shall be paid, accordingly.

The Lieutenant-Governor may from time to time vary or annul any order made under this section.

#### NOTES.

The words within [ ] brackets have been put in the section by Sch. III of the Bihar and Orissa Municipal Act in place of "shall be managed by such District Board" and "District Fund." In the province of Bihar and Orissa, "Lieutenant-Governor" means "Governor in Council, Bihar and Orissa." See Sec. 3 and Sch. D of Act VII of 1912 (I. C.)

See in this connection the case of Sheodhar Prasad Singh *vs.* Ramsaroop Singh, 7 P. L. T. 337.

36. The Lieutenant-Governor may, from time to time, delegate under such restrictions as he thinks fit, any of the powers conferred on him by this Act to any Commissioner or Magistrate of a district, or to such other officer or authority as he thinks fit, by name or official designation.

#### NOTES.

Notification No. 217 L. S. G., dated the 12th January, 1905:—In exercise of the powers conferred on him by section 36 of the Bengal Ferries Act, 1885, (Bengal Act, I of 1885), the Lieutenant-Governor is pleased to delegate to Commissioners of Divisions in Bengal, the power upon him by section 35 of the said Act, namely:—

- (a) to order that any public ferry situated in any District Board has been established under the provisions of the Bengal Local Self-Government Act, 1885, (Bengal Act III of 1885), shall be managed by such District Board;
- (b) to order that all or any of the proceeds of such ferry and all or any part of the fines levied and compensation received under the Bengal Ferries Act, 1885, in respect thereof be paid into the District Fund; and
- (c) from time to time vary or annul any order made under head (a) or head (b).

## RULES FRAMED UNDER THE BENGAL FERRIES ACT.

Bengal Government Municipal Department Circular No. 5 T. M., dated the 8th June, 1887, to Commissioners:—In accordance with the instructions contained in Government Circular No. 15 T. M., dated 25th September, 1885, draft-rules were framed by District Officers and Commissioners of Divisions under section 15 and 22 respectively of the Bengal Ferries Act, 1885, and were submitted for confirmation by the Lieutenant-Governor. From these the Lieutenant-Governor has caused to be prepared rules under each of the above sections as model rules. I am directed to forward copies of these rules for your information and for circulation amongst District Officers of your Division, and, at the same time, to observe that it is not the intention of the Lieutenant-Governor that absolutely uniform set of rules should be adopted for all districts and divisions. Rules adopted, if necessary, to suit the circumstances of each district or division, should be framed on the model rules, and I am to request that you will be good enough to submit the rules, when framed, for confirmation by the Lieutenant-Governor and publication in the *Calcutta Gazette*.

### RULES FOR THE MANAGEMENT OF PUBLIC FERRIES.

Model Rules under Section 15, Act I of 1885 (B. C.)

Rule 1. In these rules the term Magistrate includes—

- (a) the District Magistrate of.....and any Magistrate subordinate to him and appointed by him in that behalf;
- (b) the District Board of.....in respect of any public ferry the management of which has been vested in it under section 35 of Act I of 1885 (B.C.); and
- (c) any Local Board in the district of.....when legally vested with powers in respect of any public ferry by the District Board of.....

2. Every public ferry in the district of.....shall either be held in *khas* by the Magistrate, or be leased by public auction.

### RULES FOR THE MANAGEMENT OF PUBLIC FERRIES HELD KHAS.

3. For every public ferry which is held *khas*, the Magistrate shall from time to time—

- (a) provide such boats, landing stages, rest-houses, and other appliances as he shall think proper;
- (b) appoint a suitable person to superintend the plying of the ferry, provide and pay boat-men, receive the authorised tolls and remit the same to the treasury;
- (c) fix, with the approval of the Commissioner, the tolls to be levied from persons using the ferry;
- (d) cause a schedule of tolls, legibly written in the vernacular, to be fixed upon both landing-stages;
- (e) determine the maximum number of passengers, animals, carts, vehicles, and goods which each ferry boat shall carry, and cause a notice to this effect to be affixed to each boat;

- (f) determine the hours within which the boats shall ply, and the minimum number of journeys to be made every day;
- (g) provide for the prompt conveyance of mails at all times across the ferry.

4. Any person may compound for tolls payable for the use of the ferry; and if the ferry should be closed before the expiry of the period for which such person has compounded for tolls payable for its use, he shall be entitled for a refund, the amount of which shall bear the same proportion to the whole sum paid by him, as the period remaining bears to the whole period for which he compounded. Such refund shall be made under the orders of the Magistrate.

#### RULES FOR LEASING OUT FERRIES.

5. When it has been determined to lease the tolls of any public ferry by auction, under section 9 of Act I (B. C.) of 1885, the Magistrate shall, at least 15 days before the auction is held, cause an advertisement of such auction to be published, both in English, and in the vernacular in such place and in such manner as to him shall seem expedient.

6. The advertisement shall specify—

- (a) the time and place of the sale;
- (b) the period for which the ferry is to be leased, and the dates between which the lessee shall be bound to ply the ferry every year;
- (c) the number and description of boats to be maintained, the strength of the crew to be employed on each, and the maximum number of passengers, animals, vehicles and the bulk or weight of goods each is authorised to carry;
- (d) the liability or otherwise of the lessee to provide the boats and to keep them in repair;
- (e) the liability or otherwise of the lessee to provide and to keep in order the landing stages, and the rest-houses or traveller's sheds, if any, at either or both termini of the crossing;
- (f) the minimum number of crossings to be made daily at any particular season of the year;
- (g) the rate of tolls to be levied;
- (h) the person and things to be ferried over free of toll as provided in Rule 14;
- (i) the instalments in which the rent for the ferry is to be paid; and
- (j) such other particulars as the Magistrate shall consider necessary.

7. A copy of the advertisement, and of the Rule and Form of Agreement required to be executed under section 9 of the Act, shall be posted up in a conspicuous place in the Magistrate's office, and shall be duly notified on the day of the auction.

8. On the day of the auction the lessee, to whom the ferry has been knocked down, shall deposit Rs. \_\_\_\_\_ as security for the due fulfilment by him of the conditions of his lease. This deposit, may, however, at the discretion of the Magistrate, be dispensed with in the case of small ferries in which boats or canoes are not provided by Government.

9. In case in which the ferry is leased for only a year, or part of a year, the lessee shall be held liable for the rent for the entire period the moment the ferry has been knocked down to him. In cases in which the ferry is leased out for a number of years, the liability for each year's rent shall accrue from the first day of the year.

10. The contract which the lessee will be required to execute under section 9 of the Act shall be in the form appended to these rules.

11. As soon as possible after the contract has been executed by the lessee, the Magistrate shall furnish him, free of charge, with a copy of these rules, a list of the authorised tolls duly signed under section 19 of the Act, and two notice boards having written on them legibly in the vernacular the schedule of tolls applicable to the ferry, the number of boats which the lessee is bound to keep plying, the number of men by whom each boat is to be manned, and the maximum number of passengers, etc., each boat is allowed to carry. The notice board shall be fixed by the lessee in a conspicuous place at both ends of the ferry, and shall be kept by him in a proper condition. On the expiry of the lease they shall be returned to the Magistrate.

#### RULES FOR THE MANAGEMENT OF FERRIES LEASED BY PUBLIC AUCTION AND FOR REGULATING THEIR TRAFFIC.

12. The lessee shall be bound to ferry over diligently, carefully, and with the least possible delay, all passengers, vehicles, animals and goods which may come to ferry ghat to be ferried over.

13. The rates of tolls to be levied shall be those fixed by the Magistrate, with the approval of the Commissioners, under section 18 of the Act.

14. The lessee shall not charge or demand tolls for ferrying over—

- (a) Mails, mail-carts, dak-runners, and Government telegraph messengers on duty,
- (b) Commissariat stores, animals and vehicles, when accompanied by a *chalan* from the Commissariat.
- (c) Persons or property mentioned in section 3 of the Indian Tolls (Army) Act, 1906.
- (d) Police and other public officers and process-serving peons when travelling on duty with their *bona-fide* baggage, horses, *palkies* or other conveyances.
- (e) Executive officers of the District Road Department when travelling on duty.
- (f) Members of the District and Local Boards, travelling on duty connected with their office as such members.
- (g) Coolies engaged in repairing roads, with their tools and instruments.
- (h) Persons carrying dead bodies or property sent in by the Police.

15. The lessee shall not charge or demand tolls from persons, who wade or swim across, or take cattle or other animals or property across at their own cost and risk, or from persons who cross themselves, or take other persons across without charge, in their own boats.

16. The ferry shall ordinarily ply between sunrise and sunset, but the lessee may employ the boats in ferrying passengers across at any time after sunset, provided each boat so employed, carries a light, which must be displayed in a conspicuous part of the night.

17. The Magistrate may, if necessary, fix the times for the closing of the mails and dak-runners, and may, as occasion arises, vary such times. He shall in all such cases give notice in writing to the lessee of the time at which the mails are to be ferried over, and it shall thereupon become the duty of the lessee to see that arrangements are specially made for the crossing of the mails immediately on their arrival at the ferry ghat, and that no delay is allowed to occur in their transit.

18. The lessee shall provide and keep in proper order, to the satisfaction of the Magistrate, the landing stages on both sides of the ferry, and shall move them when necessary according to rise and fall of the water. He shall also provide proper rest-houses or traveller's sheds on the banks of the ferry as required by the Magistrate, and shall make all proper arrangements and provide all suitable accommodation on the ferry boats for passengers and good traffic.

19. The lessee shall mark on each boat the number of passengers, animals and vehicles, and the bulk and weight of other things it is authorised to carry at a single trip.

20. When any ferry which has been leased for a given period is discontinued under the orders of the Magistrate before the expiry of that period, the lessee shall be allowed a deduction in the rent payable for the unexpired portion of the terms of the lease. If it be shown to the satisfaction of the Magistrate that the lessee has suffered any loss consequent on the discontinuance of the ferry, the Magistrate may allow him such compensations as, he thinks, is deserved.

21. In the event of the ferry being discontinued before the expiry of the lease, either by order of the Magistrate or otherwise, all persons who have compounded for the tolls for its use shall be entitled to receive a refund calculated as in Rule 4: and unless the claims of all such persons have been satisfied by the lessee, the Magistrate shall have authority to satisfy the claims out of the deposit made by the lessee under Rule 8.

22. The lessee shall, when required by the Magistrate to do so, but not otherwise, furnish all information in his power regarding suspicious persons or classes of persons who may have been or may come to be, ferried over.

23. The lessee shall be bound to furnish such returns of traffic as may from time to time be called for by the Magistrate, and for this purpose he shall keep up a register of traffic in the form to be prescribed by the Magistrate.

24. If the lessee desires to establish communications across the ferry by means of a bridge of any kind, he shall first obtain the sanction, in writing, of the Magistrate, and shall on obtaining such sanction, carry out any order which the Magistrate may make regarding the opening of such bridge for the through passage of vessels and rafts. Such bridge shall on no account obstruct the free passage of the steam.





## BIHAR AND ORISSA ACT I OF 1919.

The Bihar and Orissa Primary Education Act, 1919.

(The assent of the Governor-General to this Act was published in the Bihar and Orissa, Gazette of the 26th February, 1919.)

### AN ACT TO PROVIDE FOR THE EXTENSION OF PRIMARY EDUCATION IN THE PROVINCE OF BIHAR AND ORISSA.

WHEREAS it is expedient to provide for the extension of primary education in the Province of Bihar and Orissa :

AND WHEREAS the previous sanction of the Governor-General has been obtained under section 79 of the Government of India Act, 1915, to the passing of this Act :

It is enacted as follows :—

Short title                      1. (1) This Act may be called the Bihar and Orissa Primary Education Act, 1919.  
(2) It extends to the whole of the Province of Bihar and Orissa.

Definitions.                      2. In this Act, unless there is anything repugnant in the subject or context,—

(1) to "attend" a recognized primary school means to be present for instruction at such school on such days and at such time or times on each day as may be required by the school committee with the approval of the prescribed educational authority;

(2) "child" means a boy who is not less than six and not more than ten years of age;

(3) "local authority" means

in an area constituted a Municipality under the Bengal Municipal Act, 1884, or under the Central Provinces Municipal Act, 1903, the Municipal Commissioners, and

in an area constituted a Union under section 38 of the Bengal Local Self-Government Act, 1885, the Union Committee of such Union subject to the control of the District Board;

(4) "parent" includes a guardian and any person who is liable to maintain or has the actual custody of a child;

(5) "prescribed" means prescribed by rules made by the Local Government under this Act;

(6) "primary education" means such instruction in reading, writing and arithmetic and other subjects (if any) as is for the time being recognized as such by the Local Government;

(7) "recognized primary school" means a school in which primary education is given, and which is for the time being recognized by the prescribed education authority;

(8) "school committee" means a committee constituted under section 4 of this Act.

Issue of notification declaring primary education of children compulsory.

8. (1) The local authority may by notification declare that from a date specified therein the primary education of children ordinarily residing in the area within its jurisdiction or in any portion of such area shall be compulsory.

(2) No such notification shall issue—

(a) unless the local authority has so determined by resolution passed at a general meeting specially called in this behalf and such resolution has been supported by at least two-thirds of the members present at the meeting;

(b) unless the local authority has satisfied the Local Government that it is in a position to make and intends to make adequate provision in schools maintained or aided or to be provided and maintained or aided by it for primary education of all children for whom such education will become compulsory upon the issue of such notification.

(c) except with the previous sanction of the Local Government

(3) Every notification under sub-section (1) shall be published in the Gazette and a copy thereof shall be posted at the office of the local authority and at such other places, if any, as the local authority may direct.

Appointment, constitution and functions of school committee.

4. (1) Where a notification under section 3 has issued in respect of any area, the local authority may appoint a school committee for the said area or separate school committees for separate portions of the said area in accordance with rules prescribed.

(2) Every school committee shall be constituted in such manner and for such period as may be prescribed.

(3) The school committee shall have to the extent prescribed the direction of education in, and the regulation of, primary schools in the area for which it is appointed and shall also enforce the provisions of this Act respecting the attendance at school and the employment of children.

Duty of parent to cause children to attend school.

such child to attend a

5. Where a notification under section 3 is in force in any area, the parent of every child shall, in the absence of reasonable excuse as hereinafter provided, and if such child ordinarily resides in such area, cause such child to attend a recognized primary school in such area.

Meaning of reasonable excuse.

any of the following cases:—

6. A parent shall be deemed to have a reasonable excuse within the meaning of section 5 for failure to cause a child to attend a recognized primary school in

(a) where the child is prevented from attending school on account of sickness, infirmity, domestic necessity, the seasonal needs of agriculture or other sufficient cause;

(b) where the child is receiving, otherwise than in a recognized primary school, instruction which in the opinion of the school committee is efficient or has already completed his primary education;

(c) where there is no recognized primary school within a distance of one mile by the nearest route from the residence of the child.

**Issue of attendance order by Magistrate.** 7. (1) Where the school committee is satisfied that a parent being bound under the provisions of section 5 to cause a child to attend a recognised primary school, has, after due warning by or at the instance of the school committee, fail to do so, the school committee may apply to a Magistrate for an order directing such parent to cause such child to attend a recognised primary school and the Magistrate shall fix a day for hearing the application and cause notice thereof to be given to the parent.

(2) On the day fixed for the hearing of the application or on any subsequent day to which it may be adjourned, and after hearing the parent or at the discretion of the Magistrate any other person on his behalf, the Magistrate may pass an order directing the parent to cause such child to attend a recognised primary school on and from a date which shall be specified in the order.

**Penalty for failure to obey attendance order.** 8. (1) Any parent who fails without reasonable excuse to comply with an order under section 7 shall on conviction before a Magistrate be punished with fine which may on the first conviction extend to two rupees and on a subsequent conviction to ten rupees.

(2) No court shall take cognisance of an offence under sub-section (1) except on a complaint of the school committee.

**Penalty for employing a child in contravention of the act.** 9. (1) Whoever knowingly employs either on his own behalf or on behalf of any other person, any child to whom the provisions of section 5 apply, so as to interfere with the attendance of such child at a recognised primary school shall, on conviction before a Magistrate, be liable to a fine which may extend to twenty-five rupees.

(2) No court shall take cognizance of an offence under sub-section (1) except on a complaint of the school committee and before making any complaint under sub-section (1) against any person, the school committee shall, unless such person has previously been convicted under sub-section (1) in respect of the same child, cause a warning to be given to such person.

**School committee may authorize member to appear.** 10. An application to a Magistrate under section 7 and a complaint to a Magistrate under section 8 or section 9 may be made on behalf of the school committee by such person as may be authorized by the committee in this behalf.

**Exemption from compulsory education.** 11. The Local Government may of its own motion or on the application of the local authority by notification exempt the children of any class of persons or any community residing in the area or any specified part of the area under the control of the local authority from the operation of this Act or may direct the local authority to make such separate provision for the education of the children of such class of persons or such community as to the Local Government may seem fit.

**Education cess.** 12. (1) If the resources, including grants from the Local Government, at the disposal of the local authority, are inadequate for the provision of efficient primary education for the children residing in the area in respect of which a notification under section 8 has issued, the local authority may, by a resolution passed at a general meeting specially called in this behalf and supported by at least two-thirds

of the members present at such meeting and with the sanction of the Local Government, impose a cess to be called education cess :

Provided that no person shall be liable to pay such cess if the children of the class of persons or the community to which he belongs, have been exempted under the provisions of section 11 from the operation of this Act.

(2) The proceeds of the education cess shall be applied by the local authority wholly to the provision of primary education under this Act and purposes connected therewith (including the provision of school accommodation) in the area from which the cess is recovered, and to the expenses of collecting the said cess.

13. Education cess shall—

Amount and manner of recovery.

- (i) in a municipality be such percentage not exceeding thirty-three and a third of the maximum tax or rate which can be imposed upon owners or occupiers of property in the said area under the provision of section 85 of the Bengal Municipal Act 1884, or of section 37 of the Central Provinces Municipal Act, 1908, as the local authority may fix, and shall be recoverable in the same manner as if it were such tax or rate;
- (ii) in a Union be such percentage not exceeding fifty of the assessment imposed under section 118-C of the Bengal Local Self-Government Act, 1885, as the local authority may fix, and shall be recoverable in the same manner as if it were such assessment.

Liability to pay school fees.

14. (1) The parent of every child attending a recognised primary school shall be liable to pay such fees as may be fixed by the local authority :

Provided that in any area where education cess has been imposed under this Act, no fees shall be payable in respect of instruction at a recognised primary school of a child who has not been exempted from the operation of this Act.

(2) In any area in which this Act is in force but no education cess has been imposed, the school committee, may, upon being satisfied that the parent of a child is unable to pay the fees payable under sub-section (1), remit such fees wholly or in part during the whole or any part of the period of compulsory attendance.

Schools to be open to inspection.

15. All primary schools maintained by a local authority in any area in which this Act is in force shall be open to inspection by any officer appointed in this behalf by the Local Government.

Withdrawal of notification under section 3, on default.

16. If the Local Government is of opinion that a local authority has made default in any of the requirements of this Act, the Local Government may by notification stating the grounds of such order cancel any notification which has been issued under section 3, or may make such other order as to the Local Government may seem fit.

Local authority to take the place of a school committee if no school committee appointed.

17. If the local authority does not appoint a school committee under the provision of this Act, the local authority shall itself exercise all the powers conferred and perform all the duties imposed by or under this Act upon a school committee so appointed.

## PRIMARY EDUCATION ACT

### Rules.

18. (1) The Local Government may by notification make rules to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing provisions, such rules may—

- (a) prescribe the educational authority referred to in section 2, sub-sections (1) and (7);
- (b) determine generally what shall be considered to be adequate provision for primary education under section 3, sub-section 2 (b);
- (c) prescribe the manner in which application shall be made for the sanction referred to in section 3, sub-section 2 (c), and the particulars to be furnished with such application;
- (d) prescribe the manner in which the school committee shall be constituted, the number of members and the period of office of members and of the school committee, its duties and powers in respect of the direction of education in, and the regulation of, primary schools, the manner in which it shall transact its business, its relations with the local authority and with the prescribed educational authority, and the circumstances in which separate school committees may be appointed for separate portions of an area in respect of which a notification under section 3 has issued.

**THE BIHAR AND ORISSA FOOD AND DRUGS  
ADULTERATION ACT, 1919.**

Bihar and Orissa Act II of 1919.

(As amended by Bihar and Orissa Act IV of 1928.)

*(The assent of the Governor-General to this Act was published in the Bihar and Orissa Gazette of the 7th May, 1919 and to the Amendment Act was published in Gazette of the 24th October, 1928.)*

**AN ACT TO MAKE PROVISION IN THE PROVINCE OF BIHAR AND  
ORISSA FOR PREVENTING THE ADULTERATION OF FOOD AND  
DRUGS.**

**WHEREAS** it is expedient to make provision in the Province of Bihar and Orissa for preventing the adulteration of food and drugs.

It is hereby enacted as follows:—

Short title and extent. 1. (1) This Act may be called the Bihar and Orissa Prevention of Adulteration Act, 1919.

(2) This section extends to the whole of Bihar and Orissa; the rest of this Act extends only to such areas as the Local Government may by notification direct.

(3) A notification under this section may extend the rest of this Act to any specified area in respect of any specified food or drug or generally in respect of all food and drugs.

Definitions.

2. In this Act, unless there is something repugnant in the subject or context—

(1) " food " means any article used for food or drink by man other than drugs or water, and includes any article which ordinarily enters into or is used in the composition or preparation of human food, and also includes flavouring matters and condiments;

(1a) " drug " includes medicine for internal or external use, other than a proprietary medicine, and every substance which the Local Government may declare to be a drug for the purposes of this Act, together with every preparation and admixture of the same;

(2) " Chemical Examiner " means the Chemical Examiner to Government, and includes an Additional Chemical Examiner and also an Assistant Chemical Examiner to Government;

(3) " local authority " means in the case of a municipality constituted under the provisions of the Bihar and Orissa Municipal Act, 1922, or of the Central Provinces Municipal Act, 1903, the Municipal Commissioners, in the case of a place declared under section 3 of the Cantonment Act, 1910, to be a cantonment, the cantonment authority, and in the case of any other area such authority or officer as the Local Government may appoint in this behalf;

(4) " the public analyst " means the Chemical Examiner, and includes in respect of any area a person appointed under subsection 2 of section 12 to be for that area the public analyst for the purposes of this Act;

(5) " rule " means a rule made under section 18.

Penalty for sale or manufacture of food not genuine, below standard, or different from food demanded by purchaser.

3. (1) Whoever sells or offers for sale or exposes for sale or manufactures for sale any food or drug which is not genuine, shall be punished with fine which may extend to one hundred rupees.

(2) Whoever sells or offers for sale or exposes for sale or manufactures for sale any food or drug which is below the standard prescribed by rule, shall be punished with fine as aforesaid.

(3) Whoever sells any food or drug which in one or more of the following respects, namely, nature, substance, quality, is not the same as the food or drug demanded by the purchaser, shall be punished with fine as aforesaid.

(4) In a prosecution under this section the Court may presume that any food or drug which has been found in the possession of a person and which is similar to food or a drug which such person is in the habit of manufacturing, has been manufactured by such person for sale.

(5) Whoever having been convicted of an offence punishable under this section, subsequently commits an offence under this section, shall be punished with imprisonment of either description which may extend to three months or with fine which may extend to five hundred rupees or with both.

### NOTES.

The fines realised in Municipalities, district boards and other local areas in the Province of Bihar and Orissa under section 3 of the Bihar and Orissa Food Adulteration are credited to the local bodies concerned. B. & O. Government letter No. 1982, L. S. G. R., dated 11th July, 1923, addressed to the Commissioner, Orissa Division.

Food when to be deemed not genuine. 4. Save in the cases hereinafter excepted, food or a drug shall be deemed to be not genuine.

(a) if in any one or more of the following respects, namely, nature, substance, quality, it is not the same as it purports or is represented to be; or

(b) if any matter or ingredient has been added fraudulently to increase the bulk, weight or measure or to conceal the inferior quality of the food or drug; or

(c) if any part of it has been abstracted so as to affect injuriously its nature, substance or quality.

(d) [omitted by Sec. 6 (iii) of Act IV of 1923.]

*Exceptions.*—Food or a drug shall not be deemed to be not genuine by reason only

(i) that any matter or ingredient not injurious to health has been added in such quantity as is necessary for the production or preparation of the food or drug as an article of commerce in a state fit for carriage or consumption; or

(ii) that any extraneous material has in the process of collection, preparation or conveyance unavoidably become mixed with the food or drug.



Power of purchaser to have food analysed

5. Any purchaser of food or of a drug shall be entitled, on payment of fees in accordance with rule, to have such food or drug analysed by the public analyst.

Power to purchase compulsorily samples of food for analysis.

6. (1) Subject to rule, a person authorized in this behalf by a local authority may purchase at the cost of the local authority any sample of food or of a drug and may submit the same to be analysed by the public analyst.

(2) If any person authorized as aforesaid, proposes to purchase any food or drug offered or exposed or manufactured or in the process of manufacture for sale, or in course of transit or stored in any place for the purpose of sale, and tenders the price for such quantity as is reasonably requisite for the purpose of analysis, and the person in possession of such food or drug for, or for the purposes of, sale refuses to sell the same, the person so refusing shall be punished with fine, which may extend to fifty rupees.

Procedure when samples of food is purchased under section 6.

7. (1) Any person purchasing any food or drug under section 6 shall, after the purchase has been completed, forthwith notify to the seller or his agent, selling the food or drug, his intention to have the same analysed, and shall divide the food or drug into three parts to be then and there separated and each part to be marked and sealed or fastened up in such manner as its nature permits.

(2) The said person shall, if required to do so, deliver one of the parts to the seller or his agent, and shall retain one part for future comparison and may submit the third part to the public analyst.

Duty of public analyst.

8. The public analyst receiving any food or drug for analysis shall divide the same into two parts, and shall seal or fasten up one of those parts and shall analyse the other part and shall send to the local authority a certificate under his hand of the result of his analysis in the form (if any) prescribed by rule, and a similar certificate together with the part sealed or fastened up as aforesaid to the purchaser of the food or drug who shall retain the same in case proceedings shall afterwards be taken in the matter.

Certificate to be evidence of facts therein stated.

9. (1) Any document purporting to be a certificate under the hand of public analyst may be used as evidence of the facts therein stated in any enquiry, trial or, other proceeding under this Act.

## NOTES

" I am directed to say that it has been brought to the notice of Government in the Ministry of Local Self-Government that the Chemical analyst to Government has been summoned to give evidence in cases under the Bihar and Orissa Food Adulteration Act, 1919. As the work of the laboratory will be seriously interfered with if the chemical analyst is required to attend in person in all such cases. I am to request that you will draw the attention of all magisterial officers and local bodies in your division to the fact that as he has been appointed as public analyst under section 12 (2) of the Act, his certificate is admissible in evidence under section 9 (1). If his certificate is challenged the matter should be referred to the Chemical Examiner, Bengal, as provided in section 9 (2) (a) of the Act. In view of this

the Chemical Analyst should not be summoned to give evidence in cases under this Act." B. & O. Government letter No. 8192-96, L. S. G. R., dated the 18th October, 1922, to all Commissioners of Divisions.

(2) (a) In the course of any such enquiry, trial or other proceeding, the Court may in its discretion, and shall at the instance of the accused if within a time specified by the Court the accused deposits in Court the expenses of analysis, cause any food or drug to be sent for analysis to the Chemical Examiner, and the expenses of such analysis shall, unless deposited in Court as aforesaid, be paid by the accused or the complainant as the Court may by order direct:

Provided that the Court shall not cause any food or drug to be sent if it is brought to the notice of the Court that a certificate under section 8 in respect of such food or drug has already been granted under the hand of the Chemical Examiner.

(b) On receiving such food or drug the Chemical Examiner shall analyse the same and send in lieu of the certificates referred to in section 8, a certificate to the said Court of the result of his analysis.

Cognisance of offences.

10. No prosecution under section 6 shall be instituted without the order or consent in writing of the local authority or of a person authorized by the local authority in this behalf.

#### NOTES.

Prosecution of the accused for an offence under sec. 21 of the Bengal Food Adulteration Act having fallen through for want of a valid sanction and the accused acquitted, the Municipal Commissioners later at a meeting passed a resolution, sanctioning the prosecution of the accused under the said Act and he was again prosecuted and tried for the same offence, held that the previous acquittal of the accused did not operate as a bar to his subsequent trial; the previous prosecution was incompetent and no cognisance could have been taken by any court, and as such there could have been no trial of the accused. *P. Banerji vs. Bepin Behary Ghose and another*, 30 C. W. N. 382.

Jurisdiction.

11. No Magistrate whose powers are less than those of a magistrate of the second class, shall try any offence under this Act.

Power to appoint local authority and public analyst.

12. (1) In respect of any area other than a municipality or a cantonment, the Local Government may appoint any authority or officer to be the local authority for the purposes of this Act.

(2) In respect of any area the Local Government or, with the approval of the Local Government, the local authority may appoint any person to be the public analyst for the purposes of this Act.

Power to make rules

13. (1) The Local Government may, subject to the condition of previous publication, make rules to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, the Local Government, may make rules—

(a) prescribing in respect of any food or drug that if such food or drug contains less than a specified proportion of any named substance, or

more than a specified proportion of any named substance, or fails to satisfy any specified tests or conditions, it shall, for the purposes of section 8, be deemed to be below the standard prescribed by rule;

(b) prescribing the fees to be paid to the public analyst under section 5 and the maner of payment;

(c) regulating or restricting the purchase of samples of food or drugs for analysis under section 6;

(d) prescribing the form of certificate to be granted by the public analyst under section 8;

(e) prescribing qualifications for appointment as the public analyst under sub-section 2 of section 12;

(f) as to the punishment, including suspension and removal, by a local authority and by the Local Government of the public analyst appointed by such local authority.

14. In the case of any food or drug sold or offered for sale or exposed for sale in an unopened tin or packet duly labelled, the provisions of this Act shall have effect subject to the following modifications.

(1) The person so selling or offering or exposing such food or drug shall not be deemed to have committed an offence under sub-section (1) of section 8, if he proves that he bought the food or drug in the same unopened tin or packet and in the same condition in which it was so sold or offered or exposed, and that using due care and attention he believed such food or drug, when he so sold or offered or exposed it, to be genuine.

(2) No person shall be required under section 6 to sell such food or drug except in the unopened tin or packet in which it is contained.

(3) A person purchasing such food or drug under section 6 may, instead of proceeding under section 7, submit it to the public analyst in the unopened tin or packet in which it is contained.

Expenses of executing Act. 15. Save as is provided in section 5 and in section 9, the expenses of executing this Act shall be borne by the local authority as may be prescribed by the Local Government.

## **RULES FRAMED UNDER THE BIHAR AND ORISSA FOOD ADULTERATION ACT.**

*Government Notification No. 9863 L. S. G., dated the 16th December, 1924.*

• In exercise of the power conferred by sub-section (2) of section 18 of the Bihar and Orissa Food Adulteration Act, 1919, (Bihar and Orissa Act II of 1919), as amended by the Bihar and Orissa Food Adulteration (Amendment) Act 1923 (Bihar and Orissa Act IV of 1923), the Government of Bihar and Orissa are pleased to prescribe the following rules:—

### **RULES.**

1. Cow's milk shall for the purposes of section 3 be deemed to be below the standard prescribed by rule if it contains less than 3.5 per cent. of fat or less than 8.5 per cent. of non-fatty solids.

2. Buffalo's milk shall for the purposes of section 3 be deemed to be below the standard prescribed by rule if it contains less than 6 per cent. of fat or less than 9 per cent. of non-fatty solids.

3. Mixed cow's and buffalo's milk shall for the purposes of section 3 be deemed to be below the standard prescribed by rule if it contains less than 5 per cent. of fat or less than 9 per cent. of non-fatty solids.

4. Wheat flour shall for the purposes of section 3 be deemed to be below the standard prescribed by rule if it contains less than 9 per cent. of gluten or more than 1 per cent. of ash.

5. Mustard oil shall for the purposes of section 3 be deemed to be below the standard prescribed by rule if the Iodine value is less than 96 or more than 108 or if the total saponification value is less than 169 or more than 176.

6. Cow ghee shall for the purposes of section 3 be deemed to be below the standard prescribed by rule if the Reichert Wollny value is less than 24.

7. Buffalo ghee shall for the purposes of section 3 be deemed to be below the standard prescribed by rule if the Reichert Wollny value is less than 30.

8. Mixed cow and buffalo ghee shall for the purposes of section 3 be deemed to be below the standard prescribed by rule if the Reichert Wollny value is less than 28.

9. Ghee of any kind shall for the purposes of section 3 be deemed to be below the standard prescribed by rule if the butyro-refractometer reading at 40°C is less than 40 or more than 42, or if the Phytosteryl Acetate test for vegetable oils and fats is not negative.

10. Butter shall for the purposes of section 3 be deemed to be below the standard prescribed by rule if it contains more than 16 per cent. of water, or if the Reichert Wollny value is less than 24 or if the butyro-refractometer reading at 40°C is less than 40 or more than 42.

**GOVERNMENT NOTIFICATION NO. 1530—M. R. DATED  
THE 21ST AUGUST, 1920.**

In exercise of the power conferred by section 18 (1) of the Bihar and Orissa Food Adulteration Act, (Bihar and Orissa Act, Act II of 1919) the Lieutenant-Governor in Council is pleased to prescribe under clause (2) of the said section the following rules for the purpose of carrying out the provisions of the said Act.

1. Boric acid or Borax, used as preservative for butter, shall not be added in a greater proportion than 0.5 per cent.

2. A purchaser of food other than a person authorised in this behalf by a local authority, shall pay a fee of Rs. 2 for the qualitative and Rs. 4 for the quantitative analysis of every sample of food sent by him to the public analyst for analysis.

3. Such fee shall be paid to the public analyst and shall be sent to him simultaneously with the sample of food sent for analysis.

4. Any person who pays a fee in the manner prescribed in rule 3 to the public analyst for the analysis of an article of food shall be entitled to receive from him a certificate of the result of his analysis in the Form given in Appendix A.

5. In respect of the following articles of food the quantity sent to the public analyst for analysis shall not be less than that noted below:—

- |                                   |     |     |                       |
|-----------------------------------|-----|-----|-----------------------|
| (i) Ghee and Oils                 | ... | ... | 2 oz. or 1 Chattaek.  |
| (ii) Flour and solid or dry foods | ... | ... | 4 oz. or 2 Chattaeks. |
| (iii) Milk and Butter             | ... | ... | 4 oz. or 2 Chattaeks. |

6. Samples of liquid substances including ghee and butter purchased under section 6 of this Act shall be taken in clean dry bottles which shall be closed with glass stoppers to prevent leakage or evaporation. Samples of solid or dry substances may be enclosed in clean paper or cloth packets or in any clean dry receptacle. All such receptacles containing samples which it is proposed to submit for analysis shall be carefully sealed.

7. All packets and parcels containing samples for analysis shall be properly labelled and addressed. The labels should give the name of the vendor, the place of collection, and date, the name of the articles and the name and the official designation, if any, of the purchaser. A letter giving the necessary particulars of the sample and enclosing also a distinct and legible impression of the seal (or sealing wax) used in packing and securing the sample shall be forwarded to the analyst.

8. In case of samples of milk purchased under section 6 in order to prevent decomposition, 2 to 3 drops of a forty per cent. solution of formalin shall be added to each ounce of milk before it is divided into three parts in accordance with section 7 (1).

**NOTES.**

With reference to the examination of the samples under the Food Adulteration Act, the Sanitary Commissioner directs the Chemical Analyst,

Sanitary Laboratory, Gulzarbagh, to decline to analyse samples which are not submitted in accordance with the above rules, as it is obvious that prosecutions based on such analysis would fail and the utility of the Act, would be lessened and confidence in its provisions lost. All samples which are not submitted in accordance with the prescribed procedure should be returned to the sender who should be referred to the rules and requested to comply with them (Sanitary Commissioner, Bihar and Orissa's No. 1867-BA-2-20, dated the 26th January, 1921.)

The Chemical Examiner is not entitled to any fees for analysis made on behalf of District Boards and Municipalities (B. G. No. 86, T. M., dated the 9th May, 1922.)

## APPENDIX A.

### BIHAR AND ORISSA FOOD ADULTERATION ACT, 1919.

Form of certificate (*As amended by B. and O. Government Notification No. 2926 M., dated 9th July, 1921*) (see sections 5 and 8).

To (*here insert the name of the person submitting the article for analysis*) I, the undersigned public analyst for the do hereby certify that I received on the day of 19, from (*here insert the name of the person delivering the sample. If the sample is received by post or by railway, entry should be made accordingly*) a sample of for analysis which then weighed or measured and have analysed the same and declare the result of my analysis to be as follows:—

I am of opinion that the same is a genuine sample of or I am of opinion that the same is not a genuine sample of or I am of opinion that the said sample contained the parts as under or the percentages of foreign ingredients as under—

### OBSERVATIONS.

(*Here the analyst may insert, at his discretion, his opinion whether the mixture (if any) was for the purpose of rendering the article portable, palatable, or of preserving it, or of improving the appearance or, was unavoidable and may state whether the ingredients mixed are or are not injurious to health.*)

Signed this.....day of....., 19

at,.....

# EXTENSION OF THE BIHAR AND ORISSA FOOD ADULTERATION ACT.

The provisions of the Act have been extended to the following areas :—

Name of District	Area to which extended.	No. and date of Government order by which extended.
1	2	3
Patna	Patna, Patna city, Barh and Khagaul Municipalities.	Notification No. 1527 M. R. dated 21-8-1920.
	Rajgir Mela in thana Bihar, Phulwari Mela in Thana Phulwari, Bihta Mela in Thana Bikrampur.	" No. 1528 M. R. dated 21-8-1920.
	Bihar Municipality.	" No. 2312 L. S. G. R. dated 25-8-24
Gaya	Gaya and Daudnagar, Municipalities.	" No. 1527 M. R. dated 21-8-1920.
Sahabad	Arra, Buxar and Dumraon Municipalities.	" No. 1527 M. R. dated 21-8-1920.
	Dumraon Municipality	" No. 8896 L. S. G. R. dated 4-12-24.
	Sasaram Municipality	" No. 3371 M. R. dated 27-12-20.
Saran	Bhabua Municipality	" No. 3624 L. S. G. R. dated 3-10-23.
	Chapra and Revelganj Municipalities.	" No. 1527 M. R. dated 21-8-1920.
	Sonepur Mela in Thana Sonepur.	" No. 1528 M. R. dated 21-8-1920.
Champanan	Siwan Municipality.	" No. 7472 L. S. G. dated 14-10-24
	Bettiah Municipality	" No. 7472 L. S. G. dated 21-8-20.
	Motihari Municipality.	" No. 2010 L. S. G. R. dated 19-8-24.
Mazaffarpur	Muzaffarpur, Hajipur and Sitamarhi Municipalities.	" No. 2010 L. S. G. R. dated 19-8-24.
	Lalganj Municipality.	" No. 6642 L. S. G. dated 10-7-24
Darbhanga	Darbhanga and Modhubani Municipalities	" No. 1527 M. R. dated 21-8-20.
	Samastipur Municipality.	" No. 3256 M. R. dated 20-12-20.
	Jathamalpur Mela, Kuseswar Asthan Mela and Sitanath Mela within the jurisdiction of Samastipur Local Board, Durga Asthan (uchit) Mela and Dukhi Mahinathpur Mela within the jurisdiction of Madhubani Local Board.	" No. 2237 L. S. G. dated 20-2-23.

Name of District.	Area to which extended.	No. and dates of Government order by which extended.
1	2	3
Monghyr	Monghyr and Jamalpur Municipalities.	} " No. 1527 M. R. dated 21-8-20.
Bhagalpur	Bhagalpur Municipality.	
	Bansi Mela in Thana Banka, Singheswar Mela in Thana Madhipura, Kabilas Mela in Thana Supaul, Sultanganj Mela in Thana Sultanganj at Gaibinath Temple, Bateswar Mela in Thana Colgong, Bateswar Mela in Gopalpur in Thana Colgong, Dhankand Mela in Thana Banka, Sultanganj Mela in Thana Banka at Balurghat.	} " No. 1528 M. R. dated 21-8-20.
Santal Parganas	Deoghar, and Sahibganj and Madhupur Municipalities.	
Purnea	Purnea Municipality.	} " No. 1527 M. R. dated 21-6-20.
Cuttack	Cuttack and Kendrapara Municipalities.	
Balasore	Balasore Municipality.	} " " "
Puri	Puri Municipality.	
Sambalpur	Sambalpur Municipality.	} " " "
Hazaribagh	Hazaribagh, Chatra and Giridih Municipalities.	
Ranchi	Ranchi Municipality.	} " " "
Palamau	Daltonganj Municipality.	
Manbhum	Purulia, Jhalda and Raghunathpur Municipalities.	} " " "
	Jharia Mining Settlement area mentioned in Govt. Notification No. 4908 M. dated 25-4-1914 but excluding the rural area mentioned in Notification No. 10985 M. dated 23-8-1915.	
Singbhum	Chaibassa and Chakradharpur Municipalities.	} " No. 1527 M. R. dated 21-8-20.
	Jamshedpur comprising the following villages (1) Beldih (2) Gumiyagora, (3) Sonari (4) Bhetya, (5) Kadma, (6) Ulyan, (7) Kalimati. (8) Khutadih, (9) Golmuri, (10) Sakchi, (11) Bora, (12) Jojobera, (13) Baridih, (14) Nildih, (15) Murakati, (16) Moharda, (17) Jugsalai, (18) Kitadih, (19) Karamadih.	



# THE BENGAL BIRTHS AND DEATHS REGISTRATION

ACT, 1873.

Being

Act No. IV of 1873.

Passed by the Lieutenant-Governor of Bengal in Council.

*(Received the assent of the Lieutenant-Governor on the  
21st April, 1873, and of the Governor-General  
on the 25th June, 1873.)*

An Act for Registering Births and Deaths.

Preamble.

WHEREAS it is expedient to provide the means for a complete register of births and deaths;

It is hereby enacted as follows:—

The Lieutenant Governor may direct that all births or deaths or births and deaths shall be registered in any area; and may define limits of such area.

1. The Lieutenant-Governor may at any time, by a notification published in the *Calcutta Gazette*, direct that all births and deaths or all births, or all deaths, occurring within the limits of any area after a certain date to be named in such notification shall be registered, and for that purpose may define the limits of such area.

From and after such date this Act shall apply to the whole of the area so defined.

Magistrate may divide area into districts and may appoint registrars.

2. The Magistrate of the district may, for the purpose of such registration, divide any such area into such and so many districts as he may think fit, and may appoint one or more persons to be registrars of births (or of deaths, or of births and deaths), within such district, and may at any time for sufficient reason

dismiss any such registrar, and may fill up any vacancy in the office of registrar.

Magistrate to publish list of registrars.

The Magistrate shall cause to be published a list containing the name and place of office of every registrar in the area, and specifying the hours of the day during which such registrar shall attend at his office for the purpose of registration.

Every registrar to have an office in his district.

3. Every registrar shall have an office within the district of which he is appointed registrar, and shall cause his name, with the addition of registrar of births (or of deaths, or of births and deaths according to his appointment) for the district for which he is appointed, and notice

of the hours during which he will attend for the purpose of registration, to be affixed in some conspicuous place on or near the outer door of his office.

**Commissioners to have registered books prepared and numbered.** 4. The Magistrate shall cause to be prepared a sufficient number of register books for making entries of all births or deaths, or both, according to such forms as the Lieutenant-Governor may from time to time sanction; and the pages of such books shall be numbered progressively from the beginning to the end; and every place of entry shall be also numbered progressively from the beginning to the end of the book, and every entry shall be divided from the following entry by a line.

**Registrar to inform himself of, and register births and deaths.** 5. Every registrar shall inform himself carefully of every birth, or of every death, or of both, according to his appointment, which shall happen in his district, and shall register, as soon as conveniently may be after the event, without fee or reward, the particulars required to be registered, according to the forms mentioned in the last preceding section, touching every such birth or every such death, as the case may be, which shall not have been already registered.

**Chaukidar to obtain particulars and to report to registrar.** 6. Every *chaukidar* or other village watchman in any area to which this Act shall apply, or where there is no *chaukidar* or other village watchman, such person as the Magistrate may appoint, shall be required to report every birth or death occurring within his beat to such registrar and at such periods as the Magistrate may direct. He shall obtain in writing, if possible, and if it is impossible for him to obtain in writing, he shall obtain verbally, from any person who is bound to give information of the birth or death, all particulars which are required to be known and registered, and he shall report such particulars to the registrar. Any *chaukidar* or other village watchman or other person so appointed who wilfully or negligently refuses or omits to produce such writing, if any, or to report such birth or death shall be punishable at the discretion of the Magistrate with fine which may extend to two rupees.

**Persons bound to give information of birth.** 7. The father or mother of every child born within such area, or in case of the death, illness, absence, or inability of the father and mother, the mid-wife assisting at the birth of such child shall, within eight days next after the day of every such birth, give information, either personally or in writing, to the registrar of the district or by means of the *chaukidar* or other village watchman or other person as provided in the last preceding section, according to the best of his or her knowledge and belief, of the several particulars hereby required to be known and registered touching the birth of such child. Any person who refuses or neglects to give any information, which it is his duty, to give under this section, shall be punishable at the discretion of the Magistrate with fine which may extend to five rupees. Provided that not more than one person shall be punishable at the discretion of the Magistrate for such refusal or neglect to give information.

Persons bound to give information of death

8. The nearest male relative of the deceased present at the death, or in attendance during the last illness of any person dying within such area, or, in the absence of any such relative, the occupier of the house, or if the occupier be the person who shall have died, some male inmate of the house in which such death shall have happened, shall, within eight days next after the day of such death, give information either personally or in writing to the registrar of the district, or by means of the *chaukidar* or other village watchman or by other person as provided in section 6, according to the best of his knowledge and belief, of the several particulars hereby required to be known and registered touching the death of such person. Provided that no person shall be bound to give the name of any female relative.

Penalty for neglect. Any person who refuses or neglects to give any information, which it is his duty to give under this section, shall be punishable at the discretion of the Magistrate with fine which may extend to five rupees. Provided that not more than one person shall be punishable for such refusal or neglect to give information.

Penalty for registrar refusing to register

9. Any registrar who refuses or neglects to register any birth or death occurring within his district, which he is bound to register, within a reasonable time after he shall have been duly informed thereof or demands or accepts any fee or reward or other gratification as a consideration for making such registry shall be punishable at the discretion of the Magistrate with fine which may extend to fifty rupees for each such refusal or neglect.

Penalty for wilfully giving false information.

10. Whoever wilfully makes or causes to be made, for the purpose of being inserted in any register of births or deaths, any false statement touching any of the particulars required to be known and registered, shall be punishable at the discretion of the Magistrate with a fine not exceeding fifty rupees.

In a municipality under Act III of 1864 the Commissioners may arrange for keeping a register of births or deaths or both.

11. In any place to which the District Municipal Improvement Act shall have been extended, the Municipal Commissioners may, if at a meeting specially convened for considering such question they shall so determine, arrange for keeping a register of all births, or of all deaths, or of all births and deaths occurring within the municipality. On and after a date to be fixed at such meeting, the Commissioners shall in such case be authorized to provide out the municipal fund for the employment of a sufficient number of registrars, and for the expenditure necessary for the maintenance of such registers, and shall exercise all the powers of a Magistrate under this Act; and all the provisions of this Act shall be deemed to apply to such place.

Magistrate may depute a subordinate Magistrate to discharge functions of the Magistrate.

12. The Magistrate of a district may depute any subordinate Magistrate to exercise the powers and to perform the duties vested in the Magistrate by this Act, within such district or any part thereof.

## ACT NO. XXXIX OF 1920.

(Passed by the Indian Legislative Council.)

(Received the assent of the Governor-General on the  
14th September, 1920.)

An Act to provide for the punishment of malpractices in connection with elections, and to make further provision for the conduct of inquiries in regard to disputed election to legislative bodies constituted under the Government of India Act.

WHEREAS it is expedient to provide for the punishment of malpractices in connection with elections, and to make further provision for the conduct of inquiries in regard to disputed elections to legislative bodies constituted under the Government of India Act;

It is hereby enacted as follows:—

### PRELIMINARY.

- Short title and extent. 1. (1) This Act may be called the Indian Elections Offences and Inquiries Act, 1920; and  
(2) It extends to the whole of British India.

### PART I.

#### *Amendment of the Indian Penal Code and Code of Criminal Procedure.*

1. (1) In section 21 of the Indian Penal Code, after the tenth entry, the following shall be inserted, namely "*Eleventh*:—Every person who holds any office in virtue of which he is empowered to prepare, publish, maintain or revise an electoral roll or to conduct an election or part of an election," and after *Explanation 2*, the following shall be added, namely:—

"*Explanation 3*—The word 'election' denotes an election for the purpose of selecting members of any legislative, municipal or other public authority, of whatever character, the method of selection to which is by, or under, any law prescribed as by election."

(2) After Chapter IX of the same Code the following Chapter shall be inserted, namely:—

### CHAPTER IX A.

#### *Of offences relating to elections.*

171A. For the purpose of this Chapter—

"Candidate," (a) "candidate" means a person who has been nominated as a candidate at any election and includes a person who, when an election is in contemplation, holds himself out as a prospective candidate thereat; provided that he is subsequently nominated as a candidate at such election;

"electoral right." (b) "electoral right" means the right of a person to stand or not to stand as, or to withdraw from being, a candidate or to vote or refrain from voting at an election.

**Bribery.****171B. (1) Whoever—**

- (i) gives a gratification to any person with the object of inducing him or any other person to exercise any electoral right or of rewarding any person for having exercised any such right; or
- (ii) accepts either for himself or for any other person any gratification as a reward for exercising any such right or for inducing or attempting to induce any other person to exercise any such right,

commits the offence of bribery :

Provided that a declaration of public policy or a promise of public action shall not be an offence under this section.

(2) A person who offers, or agrees to give, or offers or attempts to procure, a gratification shall be deemed to give a gratification.

(3) A person who obtains or agrees to accept or attempts to obtain a gratification shall be deemed to accept a gratification, and a person who accepts a gratification as a motive for doing what he does not intend to do, or as a reward for doing what he has not done, shall be deemed to have accepted the gratification as a reward.

**Undue influence at elections.** 171C. (1) Whoever voluntarily interferes or attempts to interfere with the free exercise of any electoral right commits the offence of undue influence at an election.

(2) Without prejudice to the generality of the provisions of sub-section (1), whoever—

- (a) threatens any candidate or voter, or any person in whom a candidate or voter is interested, with injury of any kind, or
- (b) induces or attempts to induce a candidate or voter to believe that he or any person in whom he is interested will become or will be rendered an object of Divine displeasure or of spiritual censure,

shall be deemed to interfere with the free exercise of the electoral right of such candidate or voter, within the meaning of sub-section (1).

(3) A declaration of public policy or a promise of public action or the mere exercise of a legal right without intent to interfere with an electoral right, shall not be deemed to be interference within the meaning of this section.

**Personation at elections.** 171D. Whoever at an election applies for a voting paper or votes in the name of any other person, whether living or dead, or in a fictitious name, or who having voted once at such election applies at the same election for a

voting paper in his own name, and whoever abets, procures or attempts to procure the voting by any person in any such way, commits the offence of personation at an election.

Punishment for bribery.

or with both :

171E. Whoever commits the offence of bribery shall be punished with imprisonment of either description for a term which may extend to one year, or with fine,

Provided that bribery by treating shall be punished with fine only.

*Explanation :—* ' Treating ' means that form of bribery, where the gratification consists in food, drink, entertainment, or provision.

Punishment for undue influence or personation at an election.

171F. Whoever commits the offence of undue influence or personation at an election shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

False statement in connection with an election.

171G. Whoever with intent to affect the result of an election makes or publishes any statement purporting to be a statement of fact which is false and which he either knows or believes to be false or does not believe to be true, in relation to the personal character or conduct of any candidate shall be punished with fine.

Illegal payments in connection with an election.

171H. Whoever without the general or special authority in writing of a candidate incurs or authorises expenses on account of the holding of any public meeting, or upon any advertisement, circular or publication, or in any other way whatsoever for the purpose of promoting or procuring the election of such candidate, shall be punished with fine which may extend to five hundred rupees :

Provided that if any person having incurred any such expenses not exceeding the amount of ten rupees without authority obtains within ten days from the date on which such expenses were incurred the approval in writing of the candidate, he shall be deemed to have incurred such expenses with the authority of the candidate.

Failure to keep election accounts.

171I. Whoever being required by any law for the time being in force or any rule having the force of law to keep accounts of expenses incurred at or in connection with an election fails to keep such accounts shall be punished with fine which may extend to five hundred rupees."

8. (1) In section 196 of the Code of Criminal Procedure, 1898, after the words " Chapter VI " the words " or IX A " shall be inserted.

(2) In Schedule II to the same Code after the entries relating to the Chapter IX of the Indian Penal Code the following shall be added, namely :—

## CHAPTER IX-A—OFFENCES RELATING TO ELECTIONS.

	Bribery	Shall not arrest wit- hout warrant	Summons	Bailable	Not compound- able	Imprisonment of either description for one year, or five, or both or if treating only, fine only.	Presidency Magistrate or Magistrate of the First class
171-E.							
171-F.	Undue influence and persuasion at an elec- tion.	Do.	Do.	Do.	Do.	Imprisonment of either description for one year, or fine or both	Do.
171-G.	False statement in connection with an election	Do	Do.	Do.	Do.	Fine	Do.
171-H.	Illegal payment in connection with elec- tions.	Do.	Do.	Do.	Do.	Fine of 500 rupees	Do.
171-I.	Failure to keep elec- tion accounts.	Do.	Do.	Do.	Do.	Do.	Do "

## PART II.

## ELECTION INQUIRIES AND OTHER MATTERS.

## Definitions.

4. In this Part, unless there is anything repugnant in the subject or context,—

- (a) "costs" means all costs, charges and expenses of, or incidental to, an inquiry;
- (b) "election" means an election to either Chamber of the Indian Legislature or to a Legislative Council constituted under the Government of India Act;
- (c) "inquiry" means an inquiry in respect of an election by Commissioners appointed for that purpose by the Governor-General, Governor, or Lieutenant-Governor;
- (d) "pleader" means any person entitled to appear and plead for another in a Civil Court, and includes an advocate, a vakil, and an attorney of a High Court.

## Powers of Commissioners.

5. Commissioners appointed to hold an inquiry shall have the powers which are vested in a Court under the Code of Civil Procedure, 1908, when trying a suit in respect of the following matters:—

- (a) discovery and inspection,
- (b) enforcing the attendance of witnesses, and requiring the deposit of their expenses,
- (c) compelling the production of documents,
- (d) examining witnesses on oath,
- (e) granting adjournments,
- (f) reception of evidence taken on affidavit, and
- (g) issuing commissions for the examination of witnesses,

and may summon and examine *suo motu* any person whose evidence appears to them to be material; and shall be deemed to be a Civil Court within the meaning of section 480 and 482 of the Code of Criminal Procedure, 1898.

*Explanation.*—For the purposes of enforcing the attendance of witnesses, the local limits of the Commissioners' jurisdiction shall be the limits of the Province in which the election was held.

## Application of Act I of 1872 to inquiries.

6. The provisions of the Indian Evidence Act, 1872, shall, subject to the provisions of this Act, be deemed to apply in all respects to an inquiry.

## Documentary evidence.

7. Notwithstanding anything in any enactment to the contrary, no document shall be inadmissible in evidence on the ground that it is not duly stamped or registered.

## Obligation of witness to answer any certificate of indemnity

8. (1) No witness shall be excused from answering any question as to any matter relevant to a matter in issue in an inquiry upon the ground that the answer to such question will criminate or may tend, directly or indirectly, to criminate him; or that it will expose, or tend, directly or indirectly, to expose him to a penalty or forfeiture of any kind:



Provided that—

(1) no person who has voted at an election shall be required to state for whom he has voted; and

(ii) a witness who, in the opinion of the Commissioners has answered truly all questions which he has been required by them to answer shall be entitled to receive a certificate of indemnity, and such certificate may be pleaded by such person in any Court and shall be deemed to be a full and complete defence to or upon any charge under Chapter IXA, of the Indian Penal Code arising out of the matter to which such certificate relates, nor shall any such answer be admissible in evidence against him in any suit or other proceeding.

(2) Nothing in sub-section (1) shall be deemed to relieve a person receiving a certificate of indemnity from any disqualification in connection with an election imposed by any law or any rule having the force of law.

Appearance by pleader. 9. Any appearance, application or act before the Commissioners may be made or done by the party in person or by a pleader duly appointed to act on his behalf.

Provided that any such appearance shall, if the Commissioners so direct, be made by the party in person.

Expenses of witnesses. 10. The reasonable expenses incurred by any person in attending to give evidence may be allowed by the Commissioners to such person, and shall, unless the Commissioners otherwise direct, be deemed to be part of the costs.

Costs and pleaders' fees, etc. 11. (1) Costs shall be in the discretion of the Commissioners and the Commissioners shall have full power to determine by and to whom and to what extent such costs are to be paid and to include in their report all necessary recommendations for the purposes aforesaid. The Commissioners may allow interest on costs at a rate not exceeding six per cent. per annum, and such interest shall be added to the costs.

(2) The fees payable by a party in respect of fees of his adversary's pleader shall be such fees as the Commissioners may allow.

Execution of orders as to costs. 12. Any order made by the Governor-General or Governor or Lieutenant-Governor on the report of the Commissioners regarding the costs of the inquiry may be produced before the principal Civil Court or original jurisdiction within the local limits of whose jurisdiction any person directed by such order to pay any sum of money has a place of residence or business, or, where such place is within the local limits of the ordinary original civil jurisdiction of a chartered High Court, before the Court of Small Causes having jurisdiction there, and such Court shall execute such order or cause it to be executed in the same manner and by the same procedure as if it were a decree for the payment of money made by itself in a suit.

Disqualification of persons found guilty of election offences. 13. Any person who has been convicted of an offence under section 171E or 171F of the Indian Penal Code or has been disqualified from exercising any electoral right, for a period of not less than five years, on account of malpractices in connection with an election shall be disqualified for five years from the date of such conviction or disqualification from—

- (a) being appointed to, or acting in, any judicial office;
- (b) being elected to any office of any local authority when the appointment to such office is by election, or holding or exercising any such office to which no salary is attached;
- (c) being elected or sitting or voting as a member of any local authority; or
- (d) being appointed or acting as a trustee of a public trust:

Provided that the Governor-General, in the case of an election to the Council of State or the Legislative Assembly, and the Governor or the Lieutenant-Governor, in the case of an election to his Legislative Council, may exempt any such person from such disqualification.

Maintenance of secrecy of voting. 14. (1) Every officer, clerk, agent or other person who performs any duties in connection with the recording or counting of votes at an election shall maintain and aid in maintaining the secrecy of the voting and shall not (except for some purpose authorised by or under any law) communicate to any person any information calculated to violate such secrecy.

(2) Any person who wilfully acts in contravention of the provisions of this section shall be punished with imprisonment of either description for a term not exceeding three months or with fine, or with both.

## BIHAR AND ORISSA ACT I OF 1920.

### THE BIHAR AND ORISSA MUNICIPAL SURVEY ACT, 1920.

*(The assent of the Governor-General to this Act was published in the Bihar and Orissa Gazette of the 24th March, 1920.)*

### AN ACT TO MAKE PROVISION FOR THE SURVEY AND RECORD OF LAND SITUATE IN MUNICIPALITIES IN BIHAR AND ORISSA.

WHEREAS it is expedient to make provision for the survey and record of land in municipalities in Bihar and Orissa;

AND WHEREAS the previous sanction of the Governor-General has been obtained under section 79 (2) of the Government of India Act, 1915, to the passing of this Act:

It is hereby enacted as follows:

Short title and extent. 1. (1) This Act may be called the Bihar and Orissa Municipal Survey Act, 1920.

(2) It extends to the whole of the Province of Bihar and Orissa including the Santal Pargannas.

Definitions. 2. In this Act, unless there is something repugnant in the subject or context,—

(a) "land" includes anything attached to the earth or permanently fastened to anything attached to the earth;

(b) the expressions "municipality," "the Commissioners" and "owner" have the same respective meanings as in the Bengal Municipal Act, 1884, except when they relate to a municipality situated in the district of Sambalpur, in which case they have the same respective meanings as the expressions "municipality" "committee" and "owner" have in the Central Provinces Municipal Act, 1908.

(c) "occupier" includes an owner in actual occupation of his own land or building;

(d) "prescribed" means prescribed by rules made under this Act;

(e) "survey" includes identification of boundaries and all other operations antecedent to or connected to or connected with survey.

Power to order survey and record. 3. (1) The Local Government, may on the application of the Commissioners or of its own motion, order that a survey and record shall be made of any or all lands

situate within a municipality.

(2) Every such order shall be notified in the Gazette, and shall be published locally in such manner and in such languages as the Local Government may direct, and shall specify the particulars to be entered in the record.

Appointment. 4. (1) For the purpose of making such survey and record, the Local Government shall appoint a Superintendent of Survey (hereinafter called the Superintendent), and may appoint one or more Assistant Superintendents of Survey.

• (2) An Assistant Superintendent of Survey shall exercise such of the powers of a Superintendent as may be delegated to him by the Superintendent.

(8) The Superintendent and every officer employed in making the survey and record shall be deemed to be a public servant within the meaning of the Indian Penal Code.

5. The Superintendent or any other officer employed as aforesaid may enter between the hours of sunrise and sunset on any land within or adjoining the municipality, and may cause boundary marks to be erected, and may make all enquiries and do all things which he considers necessary for the purpose of making the survey and record:

• Power to enter on land and to take all other requisite action.

Provided that no such entry shall be made upon land which is occupied at the time, unless either the person in immediate occupation of the land has consented thereto or a notice of the intention to make such entry has been served in manner prescribed upon such person at least twenty-four hours before such entry.

6. Before entering on any land for the purpose of making a survey or at any time during the progress of the survey, the Superintendent may by notice require the owner or the occupier of any land about to be surveyed and the owner or the occupier of any land, whether within or without the municipality, contiguous thereto,

Power to issue notices.

- (a) to attend before himself or any officer employed in making the survey and record;
- (b) to point out the boundaries of the land;
- (c) to render aid in setting up or repairing boundary marks;
- (d) to maintain and keep in repair any boundary mark erected under this Act till the survey has been completed;
- (e) to produce any document or paper in his power relating to the land;
- (f) to furnish all information and assistance necessary for carrying out the purposes of this Act;

and such person shall be bound to attend personally or by agent at such places and times (not being less than three days after the service of the notice), and to do or cause to be done all things required by the notice.

7. The Superintendent and the Assistant Superintendents of Survey shall have power to summon witnesses and enforce their attendance and to compel the production of documents by the same means (so far as may be) and in the same manner as is provided in the case of a Court under the Code of Civil Procedure, 1908, when trying a suit, and any proceeding before any such officer shall be deemed to be a "judicial proceeding" within the meaning of sections 193 and 228 of the Indian Penal Code.

Power to summon witnesses.

8. The survey and record shall be prepared in the prescribed manner, the record shall include a map, a draft, publication of the record shall be published in the prescribed manner and for the prescribed period, and a copy of such draft shall be deposited in the office of the Commissioners for the information of persons affected thereby and may there be inspected free of charge.

Preparation and draft, publication of map and record.

**Disposal of objections.** All objections which may be made within the prescribed period of publication to any entry in or to any omission from the record, shall be disposed of by such officer and in such manner, and subject to such appeal, if any, as may be prescribed:

Provided that the said officer shall, if the parties so desire, refer any such objection to arbitration, and such reference and arbitration, shall be governed by rules prescribed, and until such rules have been prescribed, paragraphs 1 to 16, both inclusive, of the Second Schedule to the Code of Civil Procedure, 1908, shall so far as may be, apply thereto,

**Final publication.** 10. (1) When all such objections have been disposed of, the Superintendent shall cause the record to be finally published in the prescribed manner, and the publication shall be conclusive evidence that the record has been duly made under this Act.

(2) The Local Government may by notification declare that the record has been finally published for any municipality, and such notification shall be conclusive evidence of such publication.

**Effect of entries in map and record.** 11. Every entry in the record finally published under section 10 shall be evidence of the matter referred to in such entry, and in any suit or proceeding to which the Commissioners are a party, shall be presumed to be correct until it is proved by evidence to be incorrect.

**Service of notices.** 12. A notice under this Act, other than a notice referred to in section 5, may be served on any person—

(a) so far as may be, in the manner provided in the Criminal Procedure Code, 1898, for the service of a summons to compel appearance or a summons to produce, as the case may be; or

(b) by post.

**Contribution and survey fee.** 13. (1) Notwithstanding anything in any law for the time being in force relating to municipalities, the Commissioners at a meeting may make such contribution as they think fit from the municipal funds towards the cost of making a survey and record under this Act.

(2) Whether or no the said Commissioners have made a contribution under sub-section (1), the Local Government may, if it thinks fit, impose a survey fee on the owner or on the occupier or on the owner and the occupier of land surveyed under this Act, and such fee shall be determined as may be prescribed and shall be recoverable as a public demand;

Provided that—

(a) if the survey and record was ordered to be made on the application of the said Commissioners the aggregate amount of the survey fees imposed shall not exceed half the total cost of making the survey and record;

(b) if the survey and record was ordered to be made otherwise than on such application, the aggregate amount of the survey fees imposed together with the contribution (if any) made under sub-section (1) of this section, shall not exceed half the total cost of making the survey and record;

(c) no survey fee shall be payable—

- (i) by Government or out of the municipal fund;
- (ii) by a person interested in land who would but for this provision be liable to pay a survey fee of less than a prescribed minimum amount;
- (iii) in respect of any land comprised in a holding exempted from assessment under section 98 of the Bengal Municipal Act, 1884, or under the corresponding provision of any other law for the time being in force in the municipality.

(8) Every person who has paid the survey fee imposed under subsection (2) shall be entitled to receive free of charge a certified extract from the record (including a certified extract from the map) relating to the land in respect of which the fee was imposed.

Penalty for failure to comply with notice.

14. If any person fails to comply with a requisition contained in any notice duly served on him under section 6, the Superintendent may impose on him a fine not exceeding one hundred rupees, and such fine shall be recoverable as a public demand.

Power to make rules.

15. The Local Government may, by rules made after previous publication, provide for—

- (a) all matters by this Act required or expressly or impliedly authorized to be prescribed;
- (b) any other matter in respect of which, in the opinion of the Local Government, sufficient provision has not been made in this Act for carrying out the purposes thereof.

Proceedings not to be affected by informality.

16. No proceedings under this Act shall be affected by reason of any informality, provided that the provisions of this Act be in substance and effect complied with.

Repeal

17. Section 228A, of the Bengal Municipal Act, 1884, is hereby repealed.

**(BIHAR AND ORISSA ACT II OF 1925).**

**THE BIHAR AND ORISSA LOCAL FUND AUDIT ACT, 1925.**

*(The assent of the Governor-General to this Act was published in the Bihar and Orissa Gazette of the 20th May, 1925.)*

*An Act to provide for any regulate the audit of Local Funds in Bihar and Orissa.*

**Preamble**

**WHEREAS** it is expedient to provide for and regulate the audit of local funds in Bihar and Orissa;

**AND WHEREAS** the previous sanction of the Governor-General under Sub-section (3) of Section 80 (A) of the Government of India Act has been obtained to the passing of this Act;

It is hereby enacted as follows:—

**Short title and extent.**

1. (1) This Act may be called the Bihar and Orissa Local Fund Audit Act, 1925.

(2) It extends to the whole of Bihar and Orissa including the Santal Parganas.

**Definitions.**

2. In this Act, unless there be anything repugnant in the subject or context:—

(a) “ auditor ” means an auditor appointed under this Act;

(b) “ Examiner of Local Accounts ” includes any person for the the being performing the duties of the Examiner of Local Accounts; and

(c) “ local fund ” means any fund not being a Cantonment fund to the control or management of which a local authority is legally entitled, and any cess, rate, duty or tax which such authority is legally entitled to impose, and any property vested in such authority.

**Liability of local authority to submit its accounts to audit.**

3. Notwithstanding anything contained in any enactment by which a local authority is constituted the accounts of any local authority whose accounts are declared by the Local Government by notification to be subject to audit under this Act shall be subject to audit in all respects in the manner provided by or under this Act, and any provision in any such enactment inconsistent with or repugnant to the provisions of this Act or of any rule made thereunder shall, to the extent of such inconsistency or repugnance, be deemed to have been repealed by this Act.

**Appointment of auditors.**

4. The Local Government may by notification appoint auditors of local funds.

**Auditor to be public servant.**

5. An auditor shall, for the purposes of the powers and duties conferred and imposed on him by or under this Act, be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code,

\*Power of auditor to require production of documents and attendance of persons concerned etc.

6. For the purpose of any audit an auditor may,  
 (a) by summons in writing or by letter require the production before him of any document which he may deem necessary for the proper conduct of the audit;  
 (b) by summons in writing require any wholetime paid servant of the local authority accountable for, or having the custody or control of, any such document to appear in person before him at any such audit; and \*

- (c) require any such person to make and sign a declaration with respect to such document or to answer any question, or prepare and submit any statement relating thereto.

Penalty for disobeying direction of auditor.

7. Any person who wilfully neglects or refuses to comply with any direction of the auditor under section 6 shall be liable on conviction before a Magistrate to a fine not exceeding one hundred rupees :

Provided that no proceedings under this section shall be instituted except on the written sanction of the Examiner of Local Accounts.

Audit report.

8. Within two months next after the completion of the audit the auditor shall prepare a report on the accounts audited and examined and shall deliver such report to the local authority concerned and a duplicate copy thereof to the Examiner of Local Accounts.

Power of Examiner of Local Accounts to surcharge or charge illegal payment or loss incurred by negligence.

(1) The auditor shall include in his report a statement of—

- (a) every payment which appears to him to be contrary to law,
- (b) the amount of any deficiency or loss which appears to have been incurred by the negligence or misconduct of any person, and
- (c) the amount of any sum which ought to have been but is not brought into account by any person.

(2) After considering such report the Examiner of Local Accounts may—

- (a) order that any payment referred to in clause (a) of sub-section (1) shall be allowed or that no further action shall be taken as regards any amount referred to in clause (b) or (c) of the said sub-section, or
- (b) serve a notice on the person making or authorizing any such payment or the person responsible for or failing to account for such amount, requiring him to show cause within one month why such payment should not be surcharged or such amount should not be charged against him.

(3) After considering such cause as may be shown by any such person the Examiner of Local Accounts may surcharge such payment on the person making or authorizing such payment or charge the amount of any loss or deficiency against the person responsible therefor or any amount which ought to have been but is not brought into account against the person failing to account for such amount and shall in every such case certify the amount due from such person.



**Recovery of surcharges and charges.** 10. (1) Any amount certified under section 9 as due from any person shall, if not paid by such person within one month next after the date of the certification thereof, be recoverable from him as a public demand, and the Examiner of Local Accounts shall, for the purposes of section 5 of the Bihar and Orissa Public Demands Recovery Act, 1914, be deemed to be the person to whom such public demand is payable.

(2) The Examiner of Local Accounts shall pay all certified amounts received by him to the local authority concerned.

**Appeal from order of surcharge or charge.** 11. (1) Any person aggrieved by any surcharge or charge made may appeal to such authority as the Governor may appoint in this behalf to set aside such surcharge or charge, and the authority so appointed after making such inquiries as it considers necessary may pass such orders as it thinks fit.

(2) Pending the disposal of such appeal all proceedings on the certificate shall be stayed.

**Payment of expenses incurred in civil suit under B & O. Act IV of 1914.** 12. (1) All expenses incurred by the Examiner of Local Accounts in any suit brought in a civil court under section 43 of the Bihar and Orissa Public Demands Recovery Act, 1914, in connection with any certificate duly filed under that Act on his requisition shall in the first instance be borne by the Local Government.

(2) The Local Government may recover from the local authority concerned such amount as may be decreed as costs in favour of the local authority and any amount so recoverable shall be paid to the Local Government by such local authority.

**Charges in respect of audit to be payable out of local fund.** 13. All expenses incurred by a local authority in complying with any requisition of the auditor under clause (b) of section 6 shall be payable out of its local fund.

**Power to make rules.** 14. The Local Government may after previous publication makes rules as to all or any of the following matters namely :—

- (i) the manner in which a local authority shall keep accounts in cases in which no such provision or, in the opinion of the Local Government, insufficient provision is made by the enactment under which any authority is constituted;
- (ii) the powers and duties of auditors and the procedure to be followed by them for conducting an audit and the times and places at which such audit may be conducted;
- (iii) for the recovery by the Local Government from a local authority of expenses incurred by the Examiner of Local Accounts under section 10 or the Local Government under section 12; and
- (iv) the power and duties of the Examiner of Local Accounts.

## BIHAR AND ORISSA ACT I OF 1924.

The Bihar and Orissa (Central Provinces Municipal) Repealing Act, 1924.

*(The assent of the Governor-General Act was published in the Bihar and Orissa Gazette of the 16th April, 1924).*

### AN ACT TO REPEAL THE CENTRAL PROVINCES MUNICIPAL ACT, 1908, IN ITS APPLICATION TO BIHAR AND ORISSA.

Preamble.

WHEREAS it is expedient to repeal the Central Provinces Municipal Act, 1908, in its application to Bihar and Orissa;

It is hereby enacted as follows:—

Short title and commencement.

1. (1) This Act may be called the Bihar and Orissa (Central Provinces Municipal) Repealing Act, 1924.

(2) It shall come into operation only on such date and subject to such exceptions and modifications, if any, as the Governor in Council by notification in the Gazette may direct.

Repeal of Act XVI of 1903 in Bihar and Orissa.

2. The Central Provinces Municipal Act, 1908, so far as it applies to Bihar and Orissa is hereby repealed.

Continuity of Municipality, officers appointments, rules etc, not affected by repeal.

3. (1) The Municipality of Sambalpur, and the members of the Committee, and the President and Vice-President thereof shall be deemed to have been constituted, appointed and elected, as the case may be, under the Bihar and Orissa Municipal Act, 1922, and for the purposes of this section references in that Act to the Commissioners, the Chairman and the Vice-Chairman shall be deemed to be references to the said members, President and Vice-President respectively.

(2) All joint committees established, limits defined, appointments, rules and orders and bye-laws made, licences granted, notifications and notices issued, taxes and rates imposed and proceedings taken under the Central Provinces Municipal Act, 1908, shall, except as the Local Government may by notification otherwise direct, respectively be deemed, as far as may be, to have been established, defined, made, granted, issued, imposed and taken under the Bihar and Orissa Municipal Act, 1922.

Passing of property, rights and liabilities to Commissioners elected and appointed under B & O Act VII of 1922.

4. All property, all rights of whatever kind used, enjoyed or possessed by, and all interests of whatever kind owned by, or vested in, or held in trust by or for, the Committee of the Municipality of Sambalpur, as well as all liabilities legally subsisting against the said Committee, shall pass to the Commissioners elected and appointed under the Bihar and Orissa Municipal Act, 1922.

Recovery of sums due to Committee.

5. All rates, taxes, payments by way of composition for a rate or tax and all sums of money therewith due to the Committee of the Municipality of Sambalpur may be recovered as though they had accrued due under the Bihar and Orissa Municipal Act, 1922.

71  
 Vacation of office by  
 existing Committee, Pre-  
 sident and Vice President.

6. Notwithstanding anything contained in Chapter II of the Bihar and Orissa Municipal Act, 1922, the terms of office of the President and Vice-President and members of the Committee of the Municipality of Sambalpur shall expire on such date or dates, not later than one year after the commencement of this Act, as the Local Government may determine, and the Local Government shall make appointments and cause a registers of voters to be prepared by the aforesaid Committee and arrangements for election to be made under the Bihar and Orissa Municipal Act, 1922, so that the Commissioners newly elected and appointed under that Act shall come into office on that date fixed for the retirement of the said Committee :

Provided that—

- (i) if any vacancy occurs in the office of a member of the said Committee before a register of voters has been prepared under the Bihar and Orissa Municipal Act, 1922, the register of voters in force immediately before the commencement of this Act shall continue to operate for the purposes of such election; and
- (ii) the President and Vice-President elected or appointed under the Central Provinces Municipal Act, 1908, shall continue in office until a Chairman has been elected or appointed under the Bihar and Orissa Municipal Act, 1922, and then vacate office.

Provision for exer-  
 cise of extraordinary  
 powers.

7. At any time within one year after the commence-  
 ment of this Act the Local Government, or the Com-  
 mittee of the Municipality of Sambalpur at a meeting  
 with the previous sanction of the Local Government, may take such action,  
 consistent so far as may be with the provisions of the Bihar and Orissa  
 Municipal Act, 1922, as may in the opinion of the Local Government be  
 necessary for the purpose of newly constituting the body of Commissioners  
 under that Act or bringing all or any of its provisions into force for the first  
 time.

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## BIHAR AND ORISSA ACT III OF 1926.

The Bihar and Orissa Highways Act, 1926.

*(The assent of the Governor-General to this Act was published in the Bihar and Orissa Gazette of the 13th October, 1926.)*

### AN ACT TO PROVIDE FOR THE BETTER MAINTENANCE AND CONTROL OF GOVERNMENT ROADS IN BIHAR AND ORISSA.

**Preamble.** WHEREAS it is expedient to provide for the regulation and safety of traffic on Government roads in Bihar and Orissa, for the prevention of obstruction and encroachments and of nuisances on or near such roads, for the preservation of such roads, and for the temporary closing of such roads for repairs or other works, or for public purposes;

AND WHEREAS the previous sanction of the Governor-General under sub-section (3) of section 80A of the Government of India Act has been obtained to the passing of this Act;

It is hereby enacted as follows:—

**Short title, extent and Commencement.** 1. (1) This Act may be called the Bihar and Orissa Highways Act, 1926.

(2) It shall extend to the whole of Bihar and Orissa including the Santal Parganas.

(3) It shall come into force on such date as the Local Government may by notification direct.

**Definitions.** 2. In this Act, unless there is anything repugnant in the subject or context,—

“ Government road ” means a road vested in, or under the control and administration of, the Public Works Department of the Local Government, and includes—

(a) the slope, berm, borrow-pits and side-drains of any such road;

(b) all lands and embankments vested in, or under the control and administration of, the said Public Works Department, and attached to a Government road;

(c) all bridges, culverts or causeways built on or across any Government road; and

(d) all fences and posts on any Government road or on any land attached to a Government road, and all road-side trees on such land.

**Temporary closing of Government roads.** 3. The Local Government or any officer empowered by the Local Government in this behalf may, by public notice, displayed in a conspicuous portion of the road, declare any Government road or part thereof to be closed temporarily for the purpose of repairing such road, or for the purpose of constructing any sewer, drain, culvert or bridge, or for any other similar public purpose:

Provided that the Local Government or any officer empowered by the Local Government in this behalf shall, before declaring any such road or part thereof to be closed, be bound, where possible, to provide other reasonably sufficient means of access to holdings adjacent to such road or part, if no such means of access already exist:

Provided also that where there is a stretch of road over half a mile in length, the road or part thereof closed at any one time shall not exceed half a mile in length, and that, where possible, in such closed parts, an alternative route shall be provided.

Power to make rules. 4. (1) The Local Government may make rules

- (i) for the regulation and safety of traffic on Government roads;
- (ii) for the prevention of obstruction and encroachments and of nuisances on or near such roads;
- (iii) for the preservation of such roads; and
- (iv) for the temporary closing of such roads for repairs or other works, or for the purposes specifically set forth in section 3.

(2) All rules made under this section shall be published in the Gazette and, on such publication, shall have the same effect as if enacted in this Act.

(3) The power to make rules under this section is subject to the condition of the rules being made after previous publication and to the following further conditions, namely:—

- (a) a draft of the rules shall be published by notification in the Gazette and in local newspapers, and
- (b) such draft shall not be further proceeded with until after the expiration of a period of one month from such publication.

Penalties.

5. In making any rule under this Act, the Local Government may direct that a breach thereof shall be punishable with a fine which may extend to ten rupees, and when the breach is a continuing one, with a further fine not exceeding one rupee for every day after the date of the first conviction during which the offender is proved to have persisted in the offence.

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